

PROPOSED RULEMAKINGS

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Accountants

The 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.

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 the licensing boards in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate schedules of civil penalties of up to \$1,000 for minor violations of the enabling acts and regulations of Bureau licensing boards.

Background and Purpose

Under authority of Act 48, the Bureau agents issue citations and impose civil penalties in accordance with schedules of civil penalties adopted by the Commissioner in consultation with Bureau licensing boards. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, respondents who receive Act 48 citations retain their due process right of appeal prior to imposition of discipline. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented. Act 48 citations have become an important part of the Bureau's enforcement efforts, with approximately 30% of all sanctions imposed by the Bureau licensing boards being accomplished through the Act 48 citation process.

Under the authority of Act 48, the Commissioner published a statement of policy at 28 Pa.B. 5883 (November 28, 1998) establishing Act 48 civil penalties for certain violations of the CPA Law (act) (63 P. S. §§ 9.1—9.16b) and the regulations of the State Board of Accountancy (Board) in §§ 11.1—11.86. The Commissioner published a final-form rulemaking at 31 Pa.B. 1227 (March 3, 2001) that replaced the statement of policy with identical Act 48 civil penalties. The Commissioner has now determined, based on input from the Board, that the Act 48 civil penalties for violations of the act and the Board's regulations require updating to further improve the efficiency of the Bureau's enforcement efforts.

The Commissioner proposes to do the following: increase the Act 48 civil penalty for one continuing professional education (CPE) violation; add Act 48 civil penalties for additional CPE violations; eliminate the Act 48 civil penalty for a CPE violation that is no longer recognized under the act; restrict the applicability of Act 48 civil penalties for certain violations involving the unauthorized use of professional designations and other unauthorized representations; and make editorial changes to the descriptions of violations for which Act 48 civil penalties are assessed.

Description of Proposed Amendments

The proposed rulemaking would increase the Act 48 civil penalty for first and second offenses regarding failure to complete at least 20 CPE hours in each year of a CPE reporting period as required under § 11.62(b) (relating to credit-hour requirement). The proposed rulemaking also would add Act 48 civil penalties for first and second offenses regarding failure, during each CPE reporting period, to complete 80 CPE hours overall, including 16 hours in accounting and attest subjects, 8 hours in tax subjects and 4 hours in professional ethics, as required under section 8.2(b) of the act (63 P. S. § 9.8b(b)) and § 11.63(a)(1), (6) and (7) (relating to continuing education subject areas). Third and subsequent offenses for these violations would continue to be handled through formal action (that is, issuance of an order to show cause). The proposed rulemaking would reflect that the violation relating to failure to timely submit documentation of CPE hours, the first offense of which is punishable by an Act 48 civil penalty, is in § 11.67(b) (relating to reporting of continuing education credit hours). A second and subsequent offense for this violation would continue to be handled through formal action.

The Board has contemporaneously submitted a proposed rulemaking, published at 41 Pa.B. 4541 (August 20, 2011), that, among other things, proposes to do the following: relocate existing CPE requirements to the sections previously referenced; establish the professional ethics requirement previously referenced; require a licensee to make up a CPE deficiency within 6 months after imposition of a disciplinary sanction for noncompliance; and provide that a licensee's failure to timely satisfy a CPE deficiency will result in the automatic suspension of the licensee's professional credentials until the deficiency is satisfied.

The proposed rulemaking would eliminate the Act 48 civil penalty for violating section 8.2(b) of the act by completing CPE hours after the end of a CPE reporting period but before the start of the next license period. When the current schedule of Act 48 civil penalties was adopted in 1998, a CPE reporting period ended on December 31 of each odd-numbered year while a license period ended on April 30 of each even-numbered year. Since 2008, the reporting period and license period have been coextensive, with both ending on December 31 of each odd-numbered year.

The proposed rulemaking would restrict the applicability of Act 48 civil penalties for the first-time unauthorized use of the titles "certified public accountant" and "public accountant," the abbreviations "CPA" and "PA" and similar representations, as prohibited under section 12(a), (c) and (j) of the act (63 P. S. § 9.12(a), (c) and (j)), to those individuals and entities that have never been credentialed by the Board as certified public accountants, public accountants or public accounting firms. The Board prefers that certified public accountants, public accountants and public accounting firms that use professional designations after their licenses have lapsed be charged with the unlicensed practice of public accounting under section 12(q) of the act, which the Board has always enforced through formal action, fashioning each disciplinary sanction on a case-by-case basis by taking into account the length of time that a license has lapsed and the type of accounting activities performed.

The proposed rulemaking also would restrict the applicability of an Act 48 civil penalty for the first-time unauthorized representation of membership in a professional accounting society, association or organization, as prohibited under section 12(o) of the act, to those individuals and entities that have never been credentialed as certified public accountants, public accountants or public accounting firms. It is not unlawful under section 12(o) of the act for certified public accountants, public accountants and public accounting firms with lapsed licenses to represent their professional membership affiliations.

Fiscal Impact

The proposed rulemaking would not impose additional costs on the regulated community because civil penalties may be imposed in any disciplinary proceeding, whether initiated by an Act 48 citation or by formal action. Rather, because the majority of disciplinary sanctions imposed by the Board involve first-time violations of CPE requirements, the regulated community should realize some savings, in the form of less time spent on paperwork and reduced legal fees, from the transfer of most CPE disciplinary proceedings to the streamlined procedures authorized by Act 48. It is not possible to give a reliable estimate of these savings.

The proposed rulemaking should also result in savings for the Board and the Bureau's Prosecution and Counsel Divisions, which would spend less time on disciplinary proceedings relating to violations of CPE requirements. It is not possible to give a reliable estimate of these savings.

The proposed rulemaking will not have a fiscal impact on the general public or other agencies and political subdivisions of the Commonwealth.

Paperwork Requirements

The proposed rulemaking will reduce the overall amount of paperwork associated with disciplinary proceedings relating to violations of CPE requirements. The proposed rulemaking would not create additional paperwork for the general public or other agencies and political subdivisions of the Commonwealth.

Effective Date

The proposed rulemaking would become effective upon final-form publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 8, 2011, the Board 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 (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). 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 Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

The Commissioner invites interested persons to submit written comments, suggestions or objections regarding the proposed rulemaking to Cynthia Montgomery, Regulatory Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

KATIE TRUE,
Commissioner

(Editor's Note: See 41 Pa.B. 4541 (August 20, 2011) for a proposed rulemaking by the State Board of Accountancy relating to this proposed rulemaking.)

Fiscal Note: 16A-48. 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

Violation under 63 P. S.

Section 9.8b(b)

Title/Description

[**Completion of continuing education hours after end of reporting period but before start of next license biennium (assumes no other continuing education violation)] **Failure to complete 80 hours of acceptable continuing professional education during reporting period****

Civil Penalty

[**1st offense—\$150**
2nd offense—formal action]
1st or 2nd offense—1 to 20 hour deficiency—\$300; 21 to 40 hour deficiency—\$600; 41 to 60 hour deficiency—\$800; 61 to 80 hour deficiency—\$1,000 #

3rd or subsequent offense—formal action

Violation under 63 P. S.	Title/Description	Civil Penalty
Section 9.12(a)	Unlawful use of “certified public accountant,” “CPA” or similar representation by person [never licensed] not possessing CPA certificate in good standing	1st offense—\$500* 2nd offense—formal action
Section 9.12(c)	[Unlawful use of “certified public accountant” “CPA” or similar representation by person not currently licensed	1st offense—up to 90 days past renewal deadline—warning; 90 days to 180 days past renewal deadline—\$500
Section 9.12(c)	Unlawful use of “certified public accountant,” “public accountant,” “CPA,” “PA” or similar representation by a firm never licensed	2nd offense—formal action] 1st offense—\$500* 2nd offense—formal action
Section 9.12(j)	[Unlawful use of “certified public accountant,” “public accountant,” “CPA,” “PA” or similar representation by a firm not currently licensed	1st offense—up to 90 days past renewal deadline—warning; 90 days to 180 days past renewal deadline—\$500
Section 9.12(j)	Unlawful use of “public accountant,” [or] “PA” or similar representation by person never licensed	2nd offense—formal action] 1st offense—\$500* 2nd offense—formal action
Section 9.12(o)	[Unlawful use of “public accountant,” or “PA” or similar representation by person not currently licensed	1st offense—up to 90 days past renewal deadline—warning; 90 days to 180 days past renewal deadline—\$500
Section 9.12(o)	Unlawful representation of membership in professional society, association or organization of CPA’s or PA’s by person not credentialed as CPA or PA or firm [never] not licensed	2nd offense—formal action] 1st offense—\$250* 2nd offense—formal action
[Unlawful representation of membership in professional society, association or organization of CPA’s or PA’s by person or firm not currently licensed	1st offense—up to 90 days past renewal deadline—warning; 90 days to 180 days past renewal deadline—\$250	
Violation under 49 Pa. Code [,] Chapter 11	2nd offense—formal action]	2nd offense—formal action] 1st or 2nd offense—[\$150] \$300
Section [11.62(a)(2)] 11.62(b)	Failure to complete 20 hours of acceptable continuing professional education during each year [(assumes no other continuing education violation)] of reporting period	[2nd] 3rd or subsequent offense—formal action
Section 11.63(a)(1)	Failure to complete 16 hours of acceptable continuing professional education in accounting and attest subjects during reporting period	1st or 2nd offense—1-4 hour deficiency—\$300; 4-8 hour deficiency—\$400; 9-12 hour deficiency—\$500; 13-16 hour deficiency—\$600 #
		3rd or subsequent offense—formal action

Violation under 63 P. S.	Title/Description	Civil Penalty
Section 11.63(a)(6)	Failure to complete 8 hours of acceptable continuing professional education in tax subjects during reporting period	1st or 2nd offense—\$300 # 3rd or subsequent offense—formal action
Section 11.63(a)(7)	Failure to complete 4 hours of acceptable continuing professional education in professional ethics during reporting period	1st or 2nd offense—\$300 # 3rd or subsequent offense—formal action
Section [11.68(b)] 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 offense—formal action

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

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).

[Pa.B. Doc. No. 11-1428. Filed for public inspection August 19, 2011, 9:00 a.m.]

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Engineers, Land Surveyors and Geologists

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to amend § 43b.13a (relating to schedule of civil penalties—engineers, land surveyors and geologists) to read as set forth in Annex A.

Effective Date

The 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 Amendment

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 licensing boards. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation retain their due process right of appeal prior to the imposition of discipline. 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. The State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board) has had an Act 48 schedule of civil penalties since 2001. See 31 Pa.B. 1227 (March 3, 2011).

Section 3(a) of the Engineer, Land Surveyor and Geologist Registration Law (act) (63 P. S. § 150(a)) makes it "unlawful for any person to practice or to offer to practice engineering in this Commonwealth, unless he is licensed and registered under the laws of this Commonwealth as a professional engineer" and similarly prohibits unlicensed

practice of land surveying and geology. Section 3(b) of the act provides that a person is construed to practice or offer to practice engineering, land surveying or geology if the person, among other things, "by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be an engineer, land surveyor or geologist, or through the use of some other title implies that he is an engineer, land surveyor or geologist or that he is registered under this act." The prohibition against unlicensed practice applies also to practicing while one's license is lapsed; that is, the license was not renewed upon expiration. See § 37.18(3) (relating to reactivation of licensure status), which provides that a licensee whose license has lapsed due to failure to register biennially with the Board is prohibited from the practice of that profession in this Commonwealth unless the licensure status is reactivated. Section 4(e) of the act (63 P. S. § 151(e)) authorizes the Board, among other things, to require licensees to register biennially with the Board and to collect the biennial registration fee, issue biennial registration to those licensees who renew, suspend the licenses of persons who do not renew and reinstate the licenses of those persons who thereafter renew and pay the registration fees. To enforce these provisions, section 11(b) of the act (63 P. S. § 158(b)) authorizes the Board to levy a civil penalty of up to \$1,000 on a licensee who violates a provision of the act or on a person who practices the profession without being properly licensed to do so. Section 5(b)(4) of Act 48 authorizes the Board, as a licensing board within the Bureau, to levy a civil penalty of not more than \$10,000 on a licensee or unlicensed person who violates a provision of the act or Board regulations. However, section 5(a) of Act 48 limits the civil penalty levied by citation to no more than \$1,000 per violation. This authority to levy a civil penalty is in addition to the Board's authority under section 4(g) of the act to suspend or revoke the license and registration of a licensee who has, among other things, committed misconduct in the practice of the profession, which includes violating a provision of the act or Board regulations.

The Board's current Act 48 schedule of civil penalties authorizes issuance of a citation under section 4(g) of the act for representing oneself as an engineer, land surveyor or geologist on a sign, advertisement, letterhead or card

without being licensed or registered and provides that the penalty for a first offense is a civil penalty of \$1,000 and for a subsequent offense is formal action. It is generally simpler and more straightforward and therefore more amenable to the streamlined procedures in Act 48 to prove that a person offered to practice the profession by holding himself out as an engineer, land surveyor or geologist through use of a business card or other medium than to prove that the person actually practiced the profession. Charges of actually practicing the profession are brought only through the traditional process of filing an order to show cause, an answer from the respondent and full hearing. The current schedule also authorizes issuance of a citation under section 4(e) of the act for biennial renewal—practicing on a lapsed license or registration and provides that the penalty for a first offense is a civil penalty of \$500 for practice up through 5 months or \$1,000 for practice from 6 months to a year and for a subsequent offense is formal action.

In the recent case of *Evans v. State Reg. Bd. for Prof. Engineers, Land Surveyors and Geologists*, 15 A.3d 99 (Pa. Cmwlth. 2011), the court reversed the Board's order sustaining a citation issued under section 4(e) of the act for practicing geology on a lapsed license. Because section 4(e) of the act empowers the Board to do many tasks but does not impose duties on licensees, the court held that a licensee cannot be disciplined for "violating" this section of the act. The court also noted that a licensee can no more "violate" a section of the act providing a definition (as does section 3(b) of the act) than "violate" a section of the act that provides the Board's authority (as does section 4(e) of the act). The court opined that the Commonwealth should have charged under section 3(a) of the act, as construed by section 3(b) of the act and in light of the Board's authority under section 4(e) of the act. The court further noted its understanding that the Commonwealth issued the citation referencing section 4(e) of the act because the Board's Act 48 schedule does not mention section 3(a) of the act, but only provides for sections 3(b) and 4(e) of the act for unlicensed practice by holding out and for practice on a lapsed license, respectively.

Description of the Proposed Amendments

The Commissioner, in consultation with the Board, proposes to amend the Board's schedule to correct the deficiencies noted by the Commonwealth Court. Instead of a citation for unlicensed practice by holding out referencing only section 3(b) of the act, the schedule would reference section 3(a) of the act and describe the violation as "offering to practice engineering, land surveying or geology by representing oneself as an engineer, land surveyor or geologist on sign, advertisement, letterhead or card, as construed by section 150(b), without being licensed or registered." Instead of a citation for practice on a lapsed license referencing section 4(e) of the act, the schedule would reference § 37.18(3) and use the language of that section to describe the violation as "practicing after license and registration have lapsed, while in compliance with continuing education requirements." The Board's regulation in § 37.19(c)(5) (relating to biennial renewal of licensure status) requires a licensee to verify compliance with the continuing education requirements as a condition of licensure renewal. Section 37.111(d) (relating to continuing education) provides that a licensee who failed to complete the required amount of continuing education is subject to an Act 48 citation and is required to make up all deficient continuing education. Because of the greater risk of harm to the public by a licensee continuing to practice after expiration of the license

without renewing due to having failed to complete the required amount of continuing education, a combination of violations should normally be addressed through formal action. However, it is not the Board's intention that the Commonwealth would be precluded from issuing both citations to a licensee who did not complete the required amount of continuing education and did not renew but continued to practice and who subsequently cured the deficiency in continuing education and reactivated the license before the end of that biennial renewal cycle. The maximum civil penalty of \$1,000 is appropriate for a licensee who has continued to practice an entire biennial renewal cycle on a lapsed license. Because the biennial renewal cycle is 24 months, the schedule would provide that the civil penalty is \$50 per month up to a maximum of \$1,000.

Subsequent violations of practicing on a lapsed license for less than one renewal cycle would also be subject to an Act 48 citation and does not need to proceed through the formal disciplinary process. Because practice for an extended period of time might suggest the need to impose additional sanctions, violations of practice on a lapsed license for more than one renewal cycle would proceed through the formal disciplinary process. The Board has concluded that the amount of the civil penalty for practicing on a lapsed license should be proportionate to the length of time from expiration of the license until the licensee has reactivated the license.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking should not have adverse fiscal impact on the Commonwealth, its political subdivisions or the private sector. The proposed rulemaking will not impose additional paperwork requirements upon the Commonwealth, its political subdivisions or the private sector. To the extent that the proposed rulemaking corrects the references in the Act 48 citation schedule, there will not be fiscal impact. Moreover, to the extent the proposed rulemaking also provides for additional violations of the act and Board regulations to be prosecuted through the issuance of a citation rather than formal action, the proposed rulemaking will reduce the paperwork requirements of both the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for those violations subject to the Act 48 citation process.

Sunset Date

Professional licensure statutes require each board to be self-supporting. Therefore, the Commissioner and the boards continuously monitor the cost effectiveness of their regulations. As a result, 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 August 8, 2011, 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 (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). 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 Board, 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 Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-

2649, ST-ENGINEER@state.pa.us, within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-54 (schedule of civil penalties—engineers, land surveyors and geologists) when submitting comments.

KATIE TRUE,
Commissioner

Fiscal Note: 16A-54. 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.13a. Schedule of civil penalties—engineers, land surveyors and geologists.

STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

Violation Under 63 P. S.	Title/Description	Penalties
Section [150(b)] 150(a)	[Representing] Offering to practice engineering, land surveying or geology in this Commonwealth by representing oneself as an engineer, land surveyor or geologist on sign, advertisement, letterhead or card, as construed by section 150(b), without being licensed or registered	1st offense—\$1,000 2nd offense—formal action
[Section 151(e)	Biennial renewal—Practicing on a lapsed license or registration	1st offense— Up thru 5 months—\$500 6 months thru 1 year—\$1,000 over 1 year—formal action 2nd offense—formal action]
	* * * *	*
Violation Under 49 Pa. Code Chapter 37	Title/Description	Penalties
	* * * *	*
Section 37.18(3)	Practicing engineering, land surveying or geology in this Commonwealth after license and registration have lapsed (while in compliance with continuing education requirements)	One renewal cycle or less—\$50 per month lapsed, not to exceed \$1,000 More than one renewal cycle—formal action

[Pa.B. Doc. No. 11-1429. Filed for public inspection August 19, 2011, 9:00 a.m.]

STATE BOARD OF ACCOUNTANCY

[49 PA. CODE CH. 11]

Continuing Professional Education

The State Board of Accountancy (Board) proposes to amend Chapter 11 to read as set forth in Annex A.

Background and Purpose

Under sections 8.2(b) and 9.2(d) of the CPA Law (act) (63 P. S. §§ 9.8b(b) and 9.9b(d)), an individual applicant for initial issuance of a license, renewal of a current license or reactivation of an expired or inactive license shall have completed 80 hours of continuing professional education (CPE) as prescribed by the Board during the relevant 2-year reporting period. Section 3(a)(10) of the act (63 P. S. § 9.3(a)(10)) empowers the Board to adopt regulations implementing CPE requirements. Section 8.2(c) and (d) of the act authorizes the Board to waive CPE requirement or to extend deadlines for compliance with CPE requirements for good or reasonable cause. Section 9.1(a)(4) and (10) of the act (63 P. S. § 9.9a(a)(4) and (10)) makes it a violation of the act for an individual to violate a Board regulation regarding professional conduct or fail to comply with CPE requirements.

The Board initially adopted CPE regulations in September 1979 and amended them in February 1985, December 1994 and January 2001. The last set of amendments dealt principally with the Board's requirements for CPE program sponsors.

The proposed rulemaking primarily would reorganize and update CPE requirements applicable to individuals who practice as certified public accountants (CPA) or public accountants (PA). Specifically, the proposed rulemaking would do the following: clarify applicable CPE reporting periods, acceptable sources of CPE hours and forms of CPE documentation, and permissible grounds for CPE waiver or modification; revise CPE subject areas, including the addition of a mandatory ethics component; simplify CPE reporting requirements; and which forms of disciplinary action will apply to which types of CPE violations. The proposed rulemaking also would expand the categories of preapproved CPE program sponsors and make editorial changes to other CPE program sponsor regulations.

Description of Proposed Rulemaking

§ 11.1. Definitions

Section 11.1 defines words, terms and phrases used in Chapter 11. The proposed rulemaking would add definitions of "CPE" and "NASBA" as abbreviations for "continuing professional education" and "National Association of State Boards of Accountancy," respectively. Consistent with the new terminology and structure of the revised CPE regulations, the proposed rulemaking also would delete the definitions of "continuing education program," "credit hour" and "professor" and clarify the definitions of "certificate of completion," "group program" (relabeled "group study program"), "interactive individual study program," "noninteractive individual study program" and "program sponsor" (relabeled "CPE program sponsor").

§ 11.61. Scope

Section 11.61 currently provides that an applicant for a license under section 8.2 of the act shall comply with CPE requirements in §§ 11.62—11.65, 11.67—11.69 and 11.71.

The proposed rulemaking would amend § 11.61 to state more fully the individuals and entities that are subject to the regulations in Chapter 11 regarding CPE and to correct the cross-references to other regulations.

§ 11.62. CPE requirement for issuance of license; waiver or extension

This section currently sets forth the basic CPE requirements and provides information about exemption from CPE requirements, modification of CPE requirements and disciplinary action for noncompliance with CPE requirements.

Subsection (a) currently requires an applicant for biennial renewal of a license to have completed 80 hours of CPE during the preceding biennial period, including a minimum of 20 hours each year and a minimum of 16 hours in accounting and auditing subjects and 8 hours in tax subjects as part of the overall total. Existing subsection (a) further provides that except as otherwise permitted in the regulations, preparation time may not be included as part of CPE hours and that the minimum measure of CPE credit is a whole credit hour (currently defined in § 11.1 (relating to definitions) as 50 minutes of participation). Subsection (b) currently provides that the Board may modify CPE requirements on an individual basis under authority of section 8.2(c) and (d) of the act. Subsection (c) currently provides that failure to comply with CPE requirements may subject a licensee to disciplinary action under section 9.1(a)(10) of the act. Subsection (d) currently provides that an applicant for an initial license is exempt from CPE requirements during the biennial period when the applicant passed the CPA examination.

The proposed rulemaking would amend the heading of this section to "CPE requirement for issuance of license; waiver or extension" and reorganize and revise its contents to clarify CPE requirements and reporting periods applicable to three types of license applicants: an applicant for an initial license; an applicant for renewal of a current license; and an applicant for reactivation of an expired or inactive license. The proposed rulemaking also would clarify the basis for waiving or extending CPE requirements and relocate the remaining contents of this section to other sections.

Proposed subsection (a) would require a regular or reciprocal applicant for an initial license to have completed 80 CPE hours, in appropriate subject areas under proposed § 11.63 (relating to CPE subject areas; relevance to professional competence), during the 2-year reporting period preceding the filing date of the application. CPE requirements would not apply to an applicant who passed the CPA examination during the 2-year period preceding the filing date of the application. The revised CPE reporting period is more meaningful than the current reporting period utilized by the Board because of its closer proximity to the filing date of the application. Under the current reporting period, an applicant for an initial license shall have completed CPE during the most recent 2-year period ending on December 31 of the odd-numbered year that precedes the filing date of the application.

Proposed subsection (b) would require an applicant for renewal of a current license to have completed 80 CPE hours, in appropriate subject areas under proposed § 11.63, during the 2-year reporting period preceding the start of the next license period. Consistent with current requirements, an applicant for renewal of a current license would have to complete 20 CPE hours during each

year of the reporting period. Under section 8.2(a) and (b) of the act, the biennial license period and the CPE reporting period for a current licensee are identical, beginning January 1 of each even-numbered year and ending December 31 of each odd-numbered year.

Proposed subsection (c) would require an applicant for reactivation of an expired or inactive license to have completed 80 CPE hours, in appropriate subject areas under proposed § 11.63, during the 2-year reporting period preceding the filing date of the application. CPE requirements would not apply to an applicant who is reactivating an inactive licensee that has a current expiration date because the applicant would have previously completed CPE as a condition for issuance of the license. Section 9.2(d) of the act prescribes the CPE reporting period applicable to the reactivation of an expired or inactive license.

Proposed subsection (d) would provide that the Board may waive a CPE requirement in whole or in part upon a showing of individual hardship, such as for reasons of illness, military service or other good cause. The Board also would be permitted to extend the time period for compliance with CPE requirements upon a showing that failure to timely complete CPE was due to reasonable cause. Section 8.2(c) and (d) of the act sets forth the Board's authority to relax or extend CPE requirements.

The proposed rulemaking would relocate text in this section as follows: required CPE subjects to proposed § 11.63; information about the awarding of CPE hours, including for "preparation time," to proposed § 11.64 (relating to sources of CPE hours); and information about the disciplinary consequences for violating CPE requirements to new § 11.68a (relating to disciplinary action for failure to comply with CPE requirements).

§ 11.63. *CPE subject areas; relevance to professional competence*

This section currently identifies the following as acceptable subject areas for CPE: accounting and auditing, advisory services, management, professional skills development, specialized knowledge and applications and taxation.

The proposed rulemaking would amend the heading of this section to "CPE subject areas; relevance to professional competence." The proposed rulemaking would also reorganize the existing provisions regarding subject matter, as revised with substantive and editorial changes, into subsection (a) and add subsection (b).

Proposed amendments to subsection (a) would relabel the subject area of accounting and auditing as "accounting and attest." The revised terminology is a more accurate description of those financial statement services that include the expressing or disclaiming of an opinion or assurance on the financial information presented. Consistent with current requirements, the proposed amendments to this section would provide that a minimum of 8 CPE hours shall be in taxation and a minimum of 16 CPE hours shall be in accounting and attest.

Proposed amendments to subsection (a) also would add the subject area of professional ethics and provide that a minimum of 4 CPE hours shall be completed in professional ethics as a condition of license renewal for the license period that begins January 1, 2014, and for subsequent license periods. A mandatory professional ethics component for CPE is desirable because it reinforces for practitioners the critical importance of discharging their duties not only with the requisite technical competency, but also with due regard for the principles of

honesty and integrity that must be the threshold attributes of anyone credentialed to practice public accounting. Forty states currently require practitioners to complete between 2 and 8 hours of professional ethics as part of their CPE. Most of these states require 4 hours of professional ethics during each CPE reporting period, which is consistent with the Model Rules to the Uniform Accountancy Act (UAA) jointly promulgated by the National Association of State Boards of Accountancy (NASBA) and the American Institute of Certified Public Accountants (AICPA). Originally, the Board intended this requirement to be effective with the renewal period that begins on January 1, 2012, and notified licensees to plan accordingly. However, delays in promulgating this proposed rulemaking led to a vote by the Board to postpone implementation of this requirement until 2014. The Board will accept CPE in the area of professional ethics already completed for the 2012 renewal. However, it will not be considered mandatory until the 2014 renewal and thereafter.

Proposed amendments to subsection (a) would delete the subject area of specialized knowledge and applications effective January 1, 2012. Specialized knowledge and applications involve concentrated skill sets for specialized industries or government functions that, in and of themselves, do not relate to the actual practice of public accounting. While it encourages practitioners to avail themselves of specialized training that is appropriate to their particular work or employment environments, the Board is of the view that the proper focus of CPE should be on fostering the continuing competency of practitioners to engage in the practice of public accounting.

Proposed subsection (b) would incorporate the requirement currently in § 11.65 (relating to criteria for continuing education programs) that all CPE hours, regardless of subject area, must directly contribute to maintaining the professional competence of a CPA or PA.

§ 11.64. *Sources of CPE hours*

This section currently sets forth the various sources of CPE hours and the conditions associated with obtaining hours from a particular source, including the need to have an approved CPE program sponsor under § 11.69a (relating to approval of CPE program sponsor). The sources of CPE hours are currently identified in this section as eight separately numbered paragraphs as follows: (1) continuing education programs of National or State accounting organizations; (2) university or college courses; (3) in-house educational programs; (4) individual study programs; (5) programs offered by other qualified organizations; (6) committee meetings; (7) service as a lecturer, discussion leader, speaker or professor; and (8) publications, articles, books and CPE courses.

The current listing of sources of CPE hours in this section tends to confuse the reader because it combines methodologies for obtaining CPE hours with categories of CPE program sponsors. The proposed rulemaking would amend the heading of this section to "sources of CPE hours" and reorganize it into four sources of CPE hours based on methodology: group study programs offered by approved CPE program sponsors in proposed paragraph (1); individual study programs offered by approved CPE program sponsors in proposed paragraph (2); service as an instructor during group study programs offered by approved CPE program sponsors in proposed paragraph (3); and authorship of articles, books and other publications relevant to maintaining professional competence in

proposed paragraph (4). The Board's CPE reporting form has long utilized this four-part rubric for classifying sources of CPE hours.

Section 11.64 currently provides that a participant in a group study program will receive 1 CPE hour for each 50 minutes of participation, unless the program is a credit course offered by an accredited college or university, in which case the participant will receive 15 CPE hours for each semester credit hour earned and 10 CPE hours for each quarter credit hour earned. Proposed paragraph (1) would restate these requirements, together with the requirement currently in § 11.65, that a participant will not receive any CPE credit until there has been at least 50 minutes of participation.

Existing § 11.64 also provides that a participant in an interactive individual study program will receive 1 CPE hour for each 50 minutes of participation. As currently defined in § 11.1, an interactive individual study program is a CPE program that is "designed to use interactive learning methodologies that simulate a classroom learning process by employing software, other courseware or administrative systems that provide significant ongoing interactive feedback to the learner regarding the learning process . . ." Existing § 11.64 further provides that a participant in a noninteractive individual study program will receive CPE credit based upon 1/2 the average completion time recommended by the program sponsor. As defined in § 11.1, a noninteractive individual study program is a CPA program that is "designed to permit a participant to learn a given subject without interaction with an instructor or interactive learning methodologies" and that requires the participant to achieve a minimum score of 70% on an examination that covers the subject. Existing § 11.64 further provides that an individual study program is considered to have been completed on the date the program sponsor issued the certificate of completion and that no more than 40 CPE hours for each reporting period may be satisfied through participation in individual study programs.

Proposed paragraph (2) would clarify that the standard for awarding CPE hours for a noninteractive individual study program is that a participant will receive 1 CPE hour for each 100 minutes of participation. This amendment is a more explicit statement of the rationale underlying the current standard, which assumes that the program sponsor's calculation of CPE hours is based on 50 minutes of participation and then halves the CPE hours so calculated. Before the advent of interactive individual study programs, most states awarded CPE credit for individual study based on a 100-minute hour recommended by the AICPA. Proposed paragraph (2) also would provide that a participant in an interactive individual study program will not receive any CPE credit until there has been at least 50 minutes of participation and that a participant in a noninteractive individual study program will not receive any CPE credit until there has been at least 100 minutes of participation.

Section 11.64 currently provides that an instructor of a qualifying CPE program will receive 3 CPE hours for each hour of instruction; 2 of the 3 CPE hours are intended cover preparation time, regardless of its actual duration. Existing § 11.64 further provides that CPE hours will not be awarded for subsequent presentation of the same program unless its content has substantially changed. With regard to college courses on accounting subjects, existing § 11.64 further provides that an instructor will be awarded CPE hours for teaching an undergraduate course in auditing, intermediate account-

ing, cost accounting, income taxation and advanced accounting or a graduate course that contributes to the student's professional competence, provided the course has not been previously utilized for CPE unless the instructor can demonstrate that its content has substantially changed. Entry-level accounting courses are specifically excluded. Existing § 11.64 further provides that no more than 40 CPE hours for each reporting period may be satisfied through serving as an instructor.

Proposed paragraph (3) would delete the special rules applicable to the teaching of college courses as unnecessary. The Board believes that an instructor of a college-level accounting course, like the instructor of any other CPE program that is offered by an approved program sponsor, should be able to claim CPE hours for teaching the course, subject only to the limitations that the course was not previously utilized for CPE during that reporting period and that the number of CPE hours claimed for each reporting period does not exceed 40. Proposed paragraph (3) also would provide that an instructor will not receive any CPE credit until there has been at least 50 minutes of instruction.

This section currently provides that the author of a publication, book, article or CPE course that contributes to the professional competence of a licensee will receive 1 CPE hour for each hour of preparation time, on a self-declared basis, up to a maximum of 20 CPE hours, unless the author can establish that there are exceptional circumstances warranting the awarding of additional hours. Existing § 11.64 further provides that the number of CPE hours claimed for all writings combined during each reporting period may not exceed 40. Existing § 11.64 further provides that a practitioner seeking CPE hours for authorship of a writing shall submit a copy of the writing at the time of application for license renewal.

Proposed paragraph (4) would eliminate authorship of writings as a basis for the awarding of CPE hours effective January 1, 2012. The Board believes that the elimination of this methodology for obtaining CPE hours is warranted because of the inherent difficulty in verifying how much time practitioners have spent on research and writing—particularly with regard to co-authored publications—and because only a small number of current practitioners during each reporting period have sought to claim CPE hours based on authorship of writings. In its February 2010 notice mailed to licensed CPAs and PAs, the Board advised those practitioners who wish to obtain CPE hours based on authorship of writings to ensure that publication occurs before January 1, 2012, because CPE hours can only be awarded for the year in which publication occurs.

Proposed paragraph (4) also would eliminate the need for a practitioner who is renewing a license for the 2012-2013 license period to submit a copy of a writing for CPE credit with the license renewal application. This is consistent with the approach of other licensing boards within the Bureau of Professional and Occupational Affairs (Bureau) that require documentary evidence regarding CPE hours to be submitted in connection with a post-renewal CPE audit rather than as part of the license renewal process. Proposed paragraph (4) would further provide, consistent with the requirements regarding other sources of CPE hours, that a practitioner will not receive CPE credit as an author unless the work required at least 50 minutes of researching and writing.

§ 11.65. Criteria for continuing education programs

Section 11.65 currently provides that to qualify as a CPE program, a program must: (1) contribute directly to

maintaining the professional competence of a CPA or PA; (2) be at least 1 credit hour in length; (3) be conducted by a qualified instructor or discussion leader; and (4) cover one of the subject areas in § 11.63.

The proposed rulemaking would rescind § 11.65 as unnecessary because its provisions are either already covered by other sections or proposed to be relocated to other sections. The provisions requiring a CPE program to be in an appropriate subject area and to be taught by a qualified instructor are currently addressed in § 11.63 and § 11.71 (relating to responsibilities of CPE program sponsor), respectively. The requirement that a CPE program be at least 1 credit hour in length (that is, involve at least 50 minutes of participation) would be addressed in the proposed amendments to § 11.64. The requirement that a CPE program contribute directly to maintaining the professional competence of a licensee would be relocated to § 11.63.

§ 11.67. Reporting of CPE hours

Subsection (a) currently requires an applicant for initial issuance or biennial renewal of a license to certify on a Board-provided CPE reporting form that the applicant has satisfied the CPE requirements for licensure. The applicant is also required to state on the reporting form, for each CPE program attended, the program title, the date of attendance, the name of the program sponsor and the CPE hours claimed. Section 11.67(b) currently provides that an applicant who falsifies the information required under § 11.67(a) may be subject to disciplinary action.

The proposed rulemaking would amend the heading of this section to “reporting of CPE hours” and revise and reorganize the content of its subsections. Proposed amendments to subsection (a) would require an applicant for initial licensure to list CPE hours on a Board-provided CPE reporting form and submit the supporting CPE documentation required under § 11.68 (relating to documentation of CPE hours) as proposed to be amended. Proposed amendments to subsection (b) would require an applicant for biennial renewal of a current license or for reactivation of an expired or inactive license to provide a certification of having satisfied CPE requirements. Proposed amendments to subsection (b) would further provide that in the event a licensee is selected by the Board for an audit of CPE hours, the licensee would be required to submit a CPE reporting form that lists the CPE hours together with the CPE documentation required under the proposed amendments to § 11.68. The current text of § 11.67(b) would be relocated to new § 11.68a.

Proposed amendments to subsection (a) clarify that an applicant for initial issuance of a license is required not only list CPE hours on a CPE reporting form but also to furnish supporting documentation that the CPE hours were, in fact, completed. The requirement that an applicant for initial licensure submit supporting CPE documentation is consistent with the requirement that an applicant, as a condition of also being issued a CPA certificate, submit satisfactory documentation of having completed postsecondary education and experience requirements and passed the CPA examination.

In the proposed amendments to subsection (b), the elimination of the CPE reporting requirement for an applicant who is renewing a current license or reactivating an expired or inactive license is consistent with section 8.2(a) of the act, which, as amended by the act of July 9, 2008 (P. L. 954, No. 73), provides that a CPA or PA may not be required to provide a list of CPE hours on

a license renewal application unless directed to do so by Board regulation. The Board interprets this amendment as reflecting the General Assembly’s view that the license renewal process should not be more burdensome than is necessary for the Board to carry out its statutory functions. Proposed amendments to subsection (b) are consistent with this view and mirror the practices of other licensing boards within the Bureau that have CPE requirements. Licenses are issued to renewing applicants based on their certification of having satisfied CPE requirements. Compliance with CPE requirements is monitored through periodic random audits of a percentage of the licensee population. The Board has successfully utilized the random audit procedure for many years. During the audits, which are conducted by administrative personnel of the Bureau, licensees are required to produce satisfactory documentation of their CPE hours. Noncomplying licensees are referred to the Professional Compliance Office for consideration of disciplinary charges.

In anticipation of the proposed rulemaking, the Board suspended enforcement of § 11.67 as it applied to CPAs and PAs who applied to renew or reactivate licenses for the 2010-2011 license period that began January 1, 2010.

§ 11.68. Documentation of CPE hours

Section 11.68 currently sets forth the requirements regarding the documentation of CPE hours. Current subsection (a) provides that a licensee bears responsibility for documenting completion of CPE hours and that CPE documentation shall be retained for 5 years. Current subsection (a) further provides that the acceptable categories of documentation include the following: (1) a certificate of completion from the program sponsor; (2) course materials and attendance verification, if a certificate of completion is not available; (3) a certified transcript, with regard to a course taken for credit at an accredited college or university, or a statement signed by the instructor of hours attended, with regard to a noncredit course taken at an accredited college or university; (4) evidence relating to the licensee’s published articles, books or CPE programs; and (5) evidence obtained from the program sponsor, college or university relating to the licensee’s having served as an instructor or discussion leader. Current subsection (b) provides that a licensee shall provide the documentation specified in subsection (a) upon audit by the Board or if there is otherwise a dispute as to whether CPE hours should be awarded. A licensee who fails to provide sufficient documentation will be denied CPE credit and may be subject to disciplinary action by the Board.

The proposed rulemaking would amend the heading of this section to “documentation of CPE hours” and revise and reorganize its contents. Proposed amendments to subsection (a) would clarify, for practitioners and program sponsors alike, the types of CPE documentation that are acceptable to establish compliance with CPE requirements. The clarified requirements should help to reduce, during the CPE audit process, the need for the Board’s administrative staff to communicate with licensees over the sufficiency of CPE documentation submitted. Proposed amendments to subsection (a)(1) would require the following: a certificate of completion from a program sponsor to include the program sponsor’s name; the program sponsor’s approval number, if applicable; the title of the program; the location of the program, if a group study program, or a statement indicating whether the program is an interactive or noninteractive individual study program; the number of recommended CPE hours and the relevant CPE subject area; the name of the

licensee; and the name and signature of the program sponsor's representative. A consolidated certificate of completion, comprising multiple CPE programs from the same program sponsor, would be permitted so long as all required information is included. Proposed amendments to subsection (a)(2) would continue to require a certified academic transcript if the CPE hours claimed are in a course taken for credit at an accredited college or university. Proposed amendments to subsection (a)(3) would provide that if a certificate of completion from the program sponsor is not available for a group study program, an attendance verification form and copies of program materials may be substituted. The attendance verification form shall be signed by the participant and contain all the information in amended § 11.68(a)(1) except the name and signature of the program sponsor's representative. Proposed amendments to subsection (a)(4) would require, for CPE hours claimed as an instructor, a signed statement from the program sponsor's representative, containing the information in proposed § 11.68(a)(1), that verifies the licensee's participation as an instructor. Proposed amendments to subsection (a)(5) would require, for CPE hours claimed as an author, a copy of the article, book or other publication that the licensee authored.

Proposed amendments to subsection (b) would incorporate the requirement in current § 11.68 that a licensee retain CPE documentation for 5 years. For CPE hours claimed as an instructor or as a participant in a group study program or individual study program, the 5-year period would begin from the date of completion of the CPE program. For CPE hours claimed as an author, the 5-year period would begin from the publication date of the article, book or publication authored. The references in current § 11.68(b) to a licensee's obligation to produce acceptable documentation of CPE hours upon the request of the Board and to a licensee's being subject to disciplinary action for failure to submit acceptable documentation of CPE hours would be addressed in amended § 11.67 (relating to reporting of CPE hours) and new § 11.68a, respectively.

§ 11.68a. Disciplinary action for failure to comply with CPE requirements

The proposed rulemaking would add § 11.68a to set forth the disciplinary procedures that will be followed for enforcement of noncompliance with CPE requirements.

Subsection (a) would provide that an individual who fails to comply with CPE requirements and has not been granted an extension or waiver by the Board will be subject to disciplinary action, in the case of a first or second offense, under § 43b.10a (relating to schedule of civil penalties—accountants) or, in the case of a third or subsequent offense, under section 9.1(a)(4) and (10) of the act, which prohibits violations of Board regulations and noncompliance with CPE requirements.

Section 43b.10a sets forth a schedule of civil penalties for certain violations of the act and the Board's regulations that was initially promulgated as a statement of policy at 28 Pa.B. 5883 (November 28, 1998) by the Commissioner of Professional and Occupational Affairs, based on recommendations from the Board, under authority in section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)). The disciplinary procedures authorized by Act 48 afford individuals and entities subject to the jurisdiction of the Bureau's licensing boards and commissions a speedier resolution of charges involving relatively minor infractions than is ordinarily available to them under the license practice acts. Only two of the Board's current CPE requirements—the 20-hour rule

in § 11.62(a) (relating to CPE requirement for issuance of license; waiver or extension) and the duty to respond to a CPE audit in § 11.68(b)—are covered by the current schedule of civil penalties. At the Board's request, the Bureau Commissioner has contemporaneously submitted proposed rulemaking, published at 41 Pa.B. 4535 (August 20, 2011), that would amend § 43b.10a to include all CPE violations, except those that represent the violator's third or subsequent offenses. The Board believes that licensees who violate the same CPE requirement more than twice should be exposed to the wider range of disciplinary sanctions, such as restrictions on licensure and substantially higher civil penalties, that are permissible in disciplinary proceedings brought under section of 9.1(a)(4) and (10) of the act.

Subsection (b) would provide that an individual who knowingly provides false information on an application about compliance with CPE requirements will be subject to disciplinary action under section 9.1(a)(1)(iii) of the act, which prohibits the obtaining of a license by fraud or deceit. This section makes clear that an individual may be separately sanctioned for failing to satisfy CPE requirements and for submitting a falsified license application regarding compliance with CPE requirements. The issue of a falsified license application generally arises when it is determined, following a CPE audit, that an individual never enrolled in or attended CPE programs for which CPE hours were claimed on the license application. It has been the Board's experience that most CPE violations occur not because the claimed CPE hours were not completed, but because the CPE hours completed did not satisfy the Board's requirements.

Subsection (c) would provide that a licensee who fails to comply with CPE requirements shall satisfy any CPE deficiency within 6 months after imposition of a disciplinary sanction for noncompliance and that failure to timely satisfy the deficiency will result in the automatic suspension of the licensee's license and underlying CPA certificate or PA registration until the deficiency is satisfied. This subsection codifies a standard provision that appears in the adjudications and orders and consent agreements and orders that impose disciplinary sanctions for noncompliance with the Board's CPE requirements.

§ 11.69. Continuing education requirements: reciprocity or reentry

Section 11.69(a) currently requires an individual who applies for and obtains a CPA certificate from the Board under the domestic or foreign reciprocity provisions of the act to comply with CPE requirements. Section 11.69(b) currently requires an individual who desires to reactivate a noncurrent license to comply with CPE requirements that are applicable to the holder of a current license.

The proposed rulemaking would rescind § 11.69 as unnecessary because its content has been relocated to § 11.62.

§ 11.69a. Approval of CPE program sponsor

Section 11.69a relates to the approval of sponsors of CPE programs. Subsection (a) currently requires an individual or entity wishing to offer a program for CPE credit under the Board's regulations to apply to the Board for approval unless exempt under § 11.69a(b). Existing subsection (a) also contains provisions regarding the expiration of previously approved program sponsors on April 30, 2001, unless the program sponsors submitted qualifying applications for new approval by that date. Section 11.69a(b) currently provides that an individual or entity that is a member in good standing of NASBA's Registry of

CPE Program Sponsors is deemed to be an approved program sponsor and is not required to submit an application for approval to the Board. Section 11.69a(c) currently lists the required contents of an application for program sponsor approval, including streamlined requirements for a previously approved program sponsor that submitted an application by April 30, 2001. Section 11.69a(d) currently requires an application for program sponsor approval to be sworn to be true and correct to the best of the applicant's knowledge. Subsection (e) currently sets forth the procedures for the Board's review of an application for program sponsor approval, including shortened procedures for a previously approved program sponsor that submitted an application by April 30, 2001. Section 11.69a(f) currently provides that an approved program sponsor will be issued an approval number. Subsection (g) currently requires an approved program sponsor to renew its approval biennially, beginning January 1, 2004, and sets forth the contents of the renewal application.

The proposed rulemaking would make editorial changes to the heading and subsections of § 11.69a to add "CPE" before "program sponsor" and deleting the outdated references to previously approved program sponsors before April 30, 2001, and to the beginning of the biennial renewal requirement on January 1, 2004.

The proposed rulemaking also would expand the categories of deemed approved program sponsors in subsection (b) to include any accredited college or university. The proposed amendment will codify the Board's long-standing interpretation that an accredited college or university is exempt from program sponsor approval requirements because accreditation procedures ensure that course offerings, including noncredit courses, satisfy minimum pedagogical requirements.

The proposed rulemaking would further expand the categories of deemed approved program sponsors to include an individual or entity that is approved as a CPE program sponsor by the accountancy regulatory body of a state that permits the practice of public accounting under principles of substantial equivalency. Practice by substantial equivalency is a concept that permits licensed CPAs in states that have adopted the UAA's requirements regarding CPA education, experience and examination to practice public accounting in other states that have adopted these requirements without the need for reciprocal licenses or temporary practice permits. The revision reflects a combination of the Board's willingness to rely on the CPE regulatory schemes of other states and its commitment to fostering the cross-border practice of public accounting by licensees of states that have adopted recognized national standards for the credentialing of CPAs. Presently, all but a handful of states permit the practice of public accounting under principles of substantial equivalency. In anticipation of the proposed rulemaking, the Board advised licensed CPAs and PAs, in the notice mailed to them in February 2010, that beginning January 1, 2010, qualifying CPE hours could be earned from programs offered by program sponsors approved by accountancy regulatory bodies in states that permit the practice of public accounting under principles of substantial equivalency.

§ 11.71. *Responsibilities of CPE program sponsor*

Section 11.71 currently sets forth the responsibilities of a program sponsor in the areas of program development and level of difficulty, program prerequisites, program review and evaluation, instructor selection and review,

program facilities, disclosures to participants, attendance records, retention of program materials and certificates of completion.

The proposed rulemaking would make editorial changes to the title and provisions of § 11.71 by adding "CPE" before "program sponsor" and providing accurate cross-references to other sections. The proposed rulemaking also would clarify that the enumerated responsibilities of program sponsors are mandatory, rather than aspirational, by replacing the word "should" with "shall" in the few places where it appears in the regulation.

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

Section 11.71a currently sets forth the procedure for the Board to conduct an offsite review of the activities of a program sponsor for the purpose of ensuring compliance with program sponsor requirements.

The proposed rulemaking would amend the title and provisions of § 11.71a by adding "CPE" before "program sponsor" and in place of "continuing education."

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

Section 11.72 currently sets forth the grounds on which the Board may withdraw the approval of a program sponsor. The proposed rulemaking would amend the title and provisions of § 11.72 by adding "CPE" before "program sponsor" and providing accurate cross-references to other sections.

Statutory Authority

Section 3(a)(10) of the act grants the Board authority to promulgate regulations regarding CPE.

Fiscal Impact

The proposed rulemaking will not increase compliance costs for CPAs and PAs because the overall number of required CPE hours remains the same while the pool of approved CPE program sponsors has been expanded.

The proposed rulemaking would likely cause the Board, its staff and the Bureau Legal Office to spend less time, and thus incur fewer costs, with regard to administering the CPE program and taking enforcement action against licensees for noncompliance. It is not possible to give a reliable estimate of the cost savings.

The proposed rulemaking will not have a fiscal impact on the general public or other agencies and political subdivisions of the Commonwealth.

Paperwork Requirements

The proposed rulemaking would lessen the overall paperwork burden on CPAs and PAs because of the streamlined procedures for reporting CPE hours. The proposed rulemaking would require some CPE program sponsors to modify their certificates of completion to include required information, but would not enlarge the volume of their paperwork.

The proposed rulemaking would require the Board to modify its applications for initial licensure, renewal of licensure and reactivation of licensure as well as its CPE reporting form.

The proposed rulemaking will not create additional paperwork for the general public or for other agencies and political subdivisions of the Commonwealth.

Effective Date

The proposed rulemaking would become effective upon final-form publication in the *Pennsylvania Bulletin* and will initially apply to the renewal of licensure for the 2012-2013 license period.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 8, 2011, the Board 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 (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). 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 Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

The Board invites interested persons to submit written comments, suggestions or objections regarding the proposed rulemaking to Cynthia K. Montgomery, Regulatory Counsel, State Board of Accountancy, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the Pennsylvania Bulletin.

MICHAEL J. MENEAR, CPA,
Chairperson

(Editor's Note: See 41 Pa.B. 4535 (August 20, 2011) for a proposed rulemaking by the Bureau of Professional and Occupational Affairs relating to this proposed rulemaking.)

Fiscal Note: 16A-5511. 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 11. STATE BOARD OF ACCOUNTANCY
GENERAL PROVISIONS

§ 11.1. Definitions.

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

* * * * *

CPE—Continuing professional education.

CPE program sponsor—A party that assumes responsibility for presenting a CPE program that is structured as a group study program, interactive individual study program or noninteractive individual study program.

* * * * *

Certificate of completion—A document prepared by [the] a CPE program sponsor [which indicates that a licensee completed a continuing education program, the credit hours earned and the date and name of the program] evidencing a participant's

completion of a group study program, interactive individual study program or noninteractive individual study program.

* * * * *

[Continuing education program—A group, self-study or correspondence program for which continuing education credit is given.

Credit hour—A unit of continuing education representing 50 minutes of participation.]

* * * * *

Group study program—[An educational process] A CPE program that is designed to permit a participant to learn a given subject through interaction with an instructor and other participants.

* * * * *

Interactive individual study program—A [continuing education] CPE program that is designed to use interactive learning methodologies that simulate a classroom learning process by employing software, other courseware or administrative systems that provide significant ongoing interactive feedback to the [learner] participant regarding the learning process [which issues a certificate of completion].

* * * * *

NASBA—National Association of State Boards of Accountancy.

* * * * *

Noninteractive individual study program—A [continuing education] CPE program that is designed to permit a participant to learn a given subject without interaction with an instructor or interactive learning methodologies [which issues a certificate of completion upon the participant's achieving] and requires the participant to achieve a 70% minimum grade on a written examination or workbook.

* * * * *

[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.]

* * * * *

CONTINUING PROFESSIONAL EDUCATION

§ 11.61. Scope.

[Applicants for a biennial permit to engage in public practice under section 8.2 of the act (63 P. S. § 9.8b) shall comply with this section and §§ 11.62—11.65 and 11.67—11.69 and 11.71.] Sections 11.62—11.64, 11.67—11.68a, 11.69a, 11.71 and 11.71a apply, as appropriate, to the following:

- (1) An individual who needs CPE to obtain or maintain a license to practice public accounting.
(2) An individual that serves or desires to serve as a CPE program sponsor.
(3) An entity that serves or desires to serve as a CPE program sponsor.

§ 11.62. [Credit-hour requirements] CPE requirement for issuance of license; waiver or extension.

(a) [To renew a license, an applicant shall complete, during the preceding biennial period, 80 credit hours of continuing education.

(1) The 80 credit hours shall include at least 16 credit hours of accounting and auditing subjects and 8 credit hours of tax subjects.

(2) A minimum of 20 credit hours shall be taken each year.

(3) The minimum measurement of continuing education credit is a whole credit hour.

(4) Preparation time will not be credited except as permitted in § 11.64(7)(i) (relating to sources of continuing education credit).

(b) The Board may upon application modify the continuing education requirements on an individual basis under circumstances specified in section 8.2(c) and (d) of the act (63 P. S. § 9.8b(c) and (d)).

(c) Failure to meet biennial continuing education requirements may subject the holder of a current license to disciplinary action under section 9.1 of the act (63 P. S. § 9.9a(10)).

(d) An applicant, upon successful completion of the uniform C.P.A. Examination, shall be exempt from the requirements of subsection (a) for only the biennial period during which the applicant successfully completed the examination.]

A regular or reciprocal applicant for an initial license shall have completed 80 CPE hours, in the subject areas in § 11.63 (relating to CPE subject areas; relevance to professional competence), during the 2-year period preceding the filing date of the application. This requirement does not apply to an applicant who passed the CPA examination during the 2-year period preceding the filing date of the application.

(b) An applicant for renewal of a current license shall have completed 80 CPE hours, in the subject areas in § 11.63, during the 2-year period preceding the start of the next license period. An applicant shall have completed a minimum of 20 CPE hours during each year of the 2-year period.

(c) An applicant for reactivation of an expired or inactive license shall have completed 80 CPE hours, in the subject areas in § 11.63, during the 2-year period preceding the filing date of the application. This requirement does not apply to an applicant who is reactivating a license that still has a current expiration date.

(d) The Board may, upon application, waive in whole or in part a CPE requirement upon a showing of individual hardship for reasons such as health, military service or other good cause. The Board, upon application, may extend the time period for completing CPE upon a showing that the failure to timely comply was due to reasonable cause.

§ 11.63. [Continuing education] CPE subject areas; relevance to professional competence.

[The following subject areas are acceptable for continuing education:]

(a) The CPE hours required under § 11.62 (relating to CPE requirement for issuance of license; waiver or extension) must be in the following subject areas and with the following minimum hours as noted:

(1) Accounting and [auditing] attest—minimum of 16 CPE hours.

(2) Advisory services—no minimum.

(3) Management—no minimum.

(4) Professional skills development—no minimum.

(5) Specialized knowledge and applications—no minimum. The Board will accept CPE hours in specialized knowledge and applications until January 1, 2012.

(6) Taxation—minimum of 8 CPE hours.

(7) Professional ethics—minimum of 4 CPE hours (effective as a condition of obtaining a license for the 2014-2015 license period and thereafter).

(b) The CPE hours required under § 11.62 must be relevant to maintaining the professional competence of a certified public accountant or public accountant.

§ 11.64. Sources of [continuing education credit] CPE hours.

[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.]

The following are the acceptable sources of CPE hours:

(1) *Group study programs offered by approved CPE program sponsors under § 11.69a (relating to approval of CPE program sponsor).*

(i) Except as provided in subparagraph (ii), a participant will receive 1 CPE hour for each 50 minutes of participation.

(ii) A participant in a credit course offered by an accredited college or university will receive 15 CPE hours for each semester credit hour earned and 10 CPE hours for each quarter credit hour earned.

(iii) A participant will not receive CPE credit for less than 50 minutes of participation.

(2) *Individual study programs offered by approved CPE program sponsors under § 11.69a.*

(i) A participant in a noninteractive individual study program will receive 1 CPE hour for each 100 minutes of participation. A participant will not receive CPE credit for less than 100 minutes of participation.

(ii) A participant in an interactive individual study program will receive 1 CPE hour for each 50 minutes of participation. A participant will not receive CPE credit for less than 50 minutes of participation.

(iii) An individual study program is considered complete on the date the program sponsor issues a certificate of completion.

(iv) A participant may receive up to 40 CPE hours in individual study programs during each reporting period.

(3) *Service as an instructor during group study programs offered by approved CPE program sponsors under § 11.69a.*

(i) A participant will receive 3 CPE hours, including 2 hours of preparation time, for each 50 minutes of instruction in a group study program. A participant will not receive CPE credit for less than 50 minutes of instruction.

(ii) A participant will not receive CPE credit for repeating instruction in the same program during the same reporting period.

(iii) A participant may receive up to 40 CPE hours as an instructor during each reporting period.

(4) *Authorship of articles, books and other publications relevant to maintaining professional competence (until January 1, 2012).*

(i) An individual who authors an article, book or other publication that is relevant to maintaining the professional competence of a certified public accountant or public accountant will receive 1 CPE hour for each 50 minutes of research and writing, up to 20 hours, unless the individual can demonstrate to the Board that the complexity of the subject matter merits the awarding of additional CPE hours. An individual will not receive CPE credit for less than 50 minutes of research and writing.

(ii) An individual may receive up to 40 CPE hours for authorship of all publications combined during each reporting period.

(iii) CPE hours will be awarded for the year in which publication occurs. CPE hours will not be awarded for publication that occurs on or after January 1, 2012.

§ 11.65. [Criteria for continuing education programs] (Reserved).

[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).]

§ 11.67. Reporting of [continuing education credit] CPE hours.

(a) [An applicant for a license or license renewal shall provide the following information on Board-provided forms:

- (1) The dates attended.
- (2) The credit hours claimed.
- (3) The title of the course.
- (4) The program sponsor.

(5) A statement certifying that continuing education requirements have been met.

(b) Falsification of information required under subsection (a) may result in disciplinary action.]

An applicant for an initial license shall submit a summary report of CPE hours on a form provided by the Board together with the CPE documentation required under § 11.68 (relating to documentation of CPE hours).

(b) An applicant for renewal of a current license or for reactivation of an expired or inactive license shall certify on the application that the applicant has completed the requirements in §§ 11.62—11.64 (relating to CPE requirement for issuance of license; waiver or extension; CPE subject areas; relevance to professional competence; and sources of CPE hours). In the event a licensee is later selected by the Board for an audit of CPE hours, the licensee shall submit a summary report of CPE hours on a form provided by the Board together with the CPE documentation required under § 11.68.

§ 11.68. [Retention of continuing education records] Documentation of CPE hours.

(a) [Responsibility for documenting the continuing education requirements rests with the applicant, and evidence to support fulfillment of those requirements shall be maintained for 5 years after the completion of educational courses. Documentation consists of:

(1) Certificate of completion from the program sponsor.

(2) Course material and attendance verification if no certificate of completion is available.

(3) A certified transcript of courses taken for credit in an accredited university or college. For noncredit courses taken, a statement of hours of attendance, signed by the instructor.

(4) Evidence of publication for published articles, books or continuing professional education programs.

(5) Evidence obtained from the sponsor or university or college of having been an instructor or discussion leader at a program or course.

(b) If there is a dispute concerning whether credit should be granted for a continuing education program, or upon audit, the applicant shall provide a copy of the documentation required in subsection

(a). The dispute will be resolved against the applicant if the applicant fails to produce evidence sufficient to document the claim and may result in disciplinary or corrective action being taken by the Board.]

The following are acceptable forms of documentation of CPE hours:

(1) A certificate of completion issued by the CPE program sponsor. A consolidated certificate of completion for multiple CPE programs from the same CPE program sponsor is acceptable as long as it includes the information in subparagraphs (i)—(vii). The certificate must set forth the following:

(i) The CPE program sponsor's name.

(ii) The CPE program sponsor's approval number issued by the Board, NASBA or another state's accountancy regulatory body, as applicable.

(iii) The title of the program.

(iv) The location of the program, if a group study program, or a statement indicating whether the program is an interactive or noninteractive individual study program.

(v) The recommended CPE hours and relevant CPE subject area (for example, accounting and attest, taxation or professional ethics).

(vi) The name of the participant.

(vii) The name and signature of the CPE program sponsor's representative.

(2) A certified academic transcript from an accredited college or university if the CPE hours claimed are in a course taken for credit at the college or university.

(3) If a certificate of completion from the CPE program sponsor is not available for a group study program, a participant may submit an attendance verification form, signed by the participant and containing the information in paragraph (1)(i)—(vi) together with copies of the program materials.

(4) A signed statement from the CPE program sponsor's representative containing the information in paragraph (1)(i)—(vi) that verifies the participant's service as an instructor.

(5) A copy of each article, book or other publication for which an individual claims CPE hours as an author.

(b) An individual shall retain the documentation in subsection (a) for 5 years after the date of completion of each CPE program or the date of publication of each article, book or publication authored.

§ 11.68a. Disciplinary action for failure to comply with CPE requirements.

(a) Unless granted an extension or waiver by the Board under § 11.62(d) (relating to CPE requirement for issuance of license; waiver or extension), and except as provided in subsection (b), a licensee who fails to comply with §§ 11.62—11.64, 11.67 and 11.68 will be subject to disciplinary action in the case of a first or second offense under § 43b.10a (relating to schedule of civil penalties—accountants) or in the case of a third or subsequent offense under section 9.1(a)(4) and (10) of the act (63 P. S. § 9.9a(a)(4) and (10)).

(b) A licensee who knowingly provides false information on an application about compliance with CPE requirements will be subject to disciplinary action under section 9.1(a)(1)(iii) of the act.

(c) A licensee who is disciplined for failure to comply with CPE requirements shall make up a deficiency in CPE hours and submit documentation of the fact to the Board within 6 months after imposition of the disciplinary sanction. A licensee who fails to submit documentation of make-up CPE hours by the prescribed deadline will undergo suspension of the licensee's license and underlying certificate of certified public accountant or public accountant registration until the documentation is submitted.

§ 11.69. [Continuing education requirements: reciprocity or reentry] (Reserved).

[(a) An individual who holds a valid certificate of certified public accountant issued by another state or a comparable certificate of degree issued by a foreign country and who receives a certificate to practice in this Commonwealth under the appropriate provision of the act will be required to comply with the continuing education requirements applicable to other applicants.

(b) Persons who wish to return to active practice in this Commonwealth by obtaining a current license shall meet the same continuing education requirements applicable to other applicants for the biennial period in which they wish to enter.]

§ 11.69a. Approval of CPE program sponsor.

(a) *Approval requirement.* Except as provided in subsection (b), any individual or entity desiring to offer a program for [continuing education] CPE credit under this chapter shall apply to the Board for approval as a CPE 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 process.* [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.] The following are deemed approved CPE program sponsors and are not required to submit applications for approval to the Board:

- (1) An individual and entity that is a member in good standing of NASBA's National Registry of CPE Program Sponsors.
- (2) An individual or entity that is approved as a CPE program sponsor by the accountancy regulatory body of a state that permits the practice of public accounting under principles of substantial equivalency.
- (3) An accredited college or university.

(c) *Contents of application for approval.* An application for approval as a CPE program sponsor 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 CPE program sponsor.
- (2) The [title and source of continuing education credit] sources of CPE hours as specified in § 11.64 (relating to sources of [continuing education credit] CPE hours).

* * * * *

(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] An application will be reviewed by the Board's [Continuing Education] CPE 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 CPE program sponsor approval number.

(g) *Biennial renewal of approval.* An approved CPE 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 CPE program sponsor's planned program offerings for the upcoming renewal period.

§ 11.71. Responsibilities of CPE program sponsor.

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

(1) *Program level of difficulty.* A CPE 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:

* * * * *

(2) *Recommendation of education and experience prerequisites.* A CPE program sponsor shall clearly identify what prerequisites are suggested for enrollment. If [no] a prerequisite is not necessary, a statement to that effect [should] shall be made. Prerequisites [should] shall 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 CPE 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 CPE 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 CPE program sponsor shall review the course materials 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] to prospective participants.* A CPE 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] CPE hours involved in the program.

(6) *Selection and review of instructors.* A CPE program sponsor shall select and assign qualified instructors for the [continuing education] CPE program. A CPE program sponsor [should] shall evaluate the performance of 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 CPE 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 physical facilities, a CPE 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] shall 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] shall be made available to encourage communication with a small group.

(8) *Program evaluation.* A CPE 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 CPE program sponsor to strive for increased program effectiveness. Programs should be evaluated to determine whether:

* * * * *

(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[,] and oral feedback to the instructor

or CPE program sponsor[, and so forth]. Instructors [should] shall be informed of their performance, and the CPE program sponsor [should] shall systematically review the evaluation process to ensure its effectiveness.

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

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

(11) *Certificate of completion.* A CPE program sponsor shall provide [participants with] a certificate of completion [evidencing satisfactory completion and attendance of the program] to each participant who satisfactorily completes a program. A certificate of completion must contain the information in § 11.68(a)(1) (relating to documentation of CPE hours).

(12) *Promotional materials.* A CPE program sponsor shall identify the subject area[—see] of a program under § 11.63 (relating to [continuing education] CPE subject areas; relevance to professional competence)[—of the program] in the program's promotional materials.

§ 11.71a. Offsite review of CPE program sponsor.

A CPE program sponsor shall be subject to an offsite review of its [continuing education] CPE 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 CPE program sponsor under this chapter, including:

(1) The information in § 11.69a(c) (relating to approval of CPE program sponsor).

* * * * *

§ 11.72. Withdrawal of approval of CPE 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 CPE program sponsor that the Board finds guilty of:

* * * * *

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

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

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

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

[Pa.B. Doc. No. 11-1430. Filed for public inspection August 19, 2011, 9:00 a.m.]