



BOARD OF ACCOUNTANCY

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June 21, 2019

Legislative Reference Library
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St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Amendment to Rules of the Board of Accountancy
Governing Examinations and Housekeeping Updates; Revisor's ID Number R-04582

Dear Librarian:

The Minnesota Board of Accountancy ("Board") intends to adopt rules relating to examinations and housekeeping updates. We plan to publish a Dual Notice of Intent to Adopt Rules without a Public Hearing Unless 25 or More Persons Request a Hearing in the July 1, 2019, State Register.

The Board has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Board is sending the Library an electronic copy of the Statement of Need and Reasonableness prior to mailing our Dual Notice.

If you have questions, please contact me at 651-757-1511.

Yours very truly,

A handwritten signature in blue ink that reads "Andrea Barker".

Andrea Barker
Assistant Executive Director

Enclosure: Statement of Need and Reasonableness

Minnesota Board of Accountancy

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Governing Examinations and Housekeeping Updates, Minnesota Rules, parts 1105.1100, 1105.1800, 1105.2000, 1105.3700, and 1105.4000.

Revisor's ID Number R-04582

INTRODUCTION AND BACKGROUND INFORMATION

The nature of the proposed rules of the Board of Accountancy ("Board") is to amend its current rules pertaining to the frequency in which an applicant may sit for the Certified Public Accountant Examination and to make other housekeeping updates. The amendments to the rules will allow applicants to retake a failed examination section according to the frequency allowed by the National Association of the State Boards of Accountancy. Additionally, the amendments will clarify the passing score for the ethics examination required for initial licensure, clarify that a licensee must supply the Board with a physical address rather than a post office box, and make changes to obsolete, unnecessary, or duplicative rules as identified in the Board's 2017 Obsolete Rule Report.

ALTERNATIVE FORMAT

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Andrea Barker at the Board of Accountancy, 85 E. 7th Place, Suite 125, St. Paul, MN 55101, 651-757-1511, Fax: 651-282-2644, and email: andrea.barker@state.mn.us. TTY users may call the Board at (800) 627-3529.

STATUTORY AUTHORITY

This rulemaking is an amendment of rules for which the Legislature has not revised the statutory authority and so Minnesota Statutes, section 14.125, does not apply.

The Board's statutory authority to adopt the rules is stated in Minnesota Statutes section 326A.02, subdivision 5, which provides:

326A.02 STATE BOARD OF ACCOUNTANCY

Subd. 5. **Rules.** The board may adopt rules governing its administration and enforcement of this chapter and the conduct of licensees and persons registered under section 326A.06, paragraph (b), including:

- (1) rules governing the board's meetings and the conduct of its business;
- (2) rules of procedure governing the conduct of investigations and hearings and discipline by the board;

- (3) rules specifying the educational and experience qualifications required for the issuance of certificates and the continuing professional education required for renewal of certificates;
- (4) rules of professional conduct directed to controlling the quality and probity of services by licensees, and dealing among other things with independence, integrity, and objectivity; competence and technical standards; and responsibilities to the public and to clients;
- (5) rules governing the professional standards applicable to licensees including adoption of the standards specified in section 326A.01, subdivision 2, and as developed for general application by recognized national accountancy organizations such as the American Institute of Certified Public Accountants or the Public Company Accounting Oversight Board;
- (6) rules governing the manner and circumstances of use of the titles "certified public accountant," "CPA," "registered accounting practitioner," and "RAP";
- (7) rules regarding peer review that may be required to be performed under provisions of this chapter;
- (8) rules on substantial equivalence to implement section 326A.14;
- (9) rules regarding the conduct of the certified public accountant examination;
- (10) rules regarding the issuance and renewals of certificates, permits, and registrations;
- (11) rules regarding transition provisions to implement this chapter;
- (12) rules specifying the educational and experience qualifications for registration, rules of professional conduct, rules regarding peer review, rules governing standards for providing services, and rules regarding the conduct and content of examination for those persons registered under section 326A.06, paragraph (b);
- (13) rules regarding fees for examinations, certificate issuance and renewal, firm permits, registrations under section 326A.06, paragraph (b), notifications made under section 326A.14, and late processing fees; and
- (14) upon any change to this chapter, if the board determines a change in Minnesota Rules is required, the board may initiate the expedited process under section 14.389 up to one year after the effective date of the change to this chapter.

Under this statute, the Board has the necessary statutory authority to adopt the proposed rules.

REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give the agency's response.

“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”

The classes of persons affected by and benefiting from the proposed amendments to the rules are applicants for the Certified Public Accountant (CPA) exam. Housekeeping amendments will generally

positively affect all licensees and registrants and specifically affect individuals applying for initial licensure, persons granted exempt status, and non-CPA firm owners.

A line item in the Board's budget covers the cost of the rulemaking.

“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”

The probable costs to the Board include the cost of the rulemaking in general.

The Board does not anticipate an increase or decrease in the cost of enforcing the rules. It also does not anticipate probable costs to any other agency because the Board is the only entity charged with implementing and enforcing the proposed rules.

“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”

The purpose of the proposed rule modifications is to change requirements delineated in existing rules. Rule writing is the only method that exists to achieve this goal.

“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”

Administrative rules are the only method available to the Board to define requirements for examination and licensure.

“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”

There are no probable costs for governmental units, business, or individuals to comply with the proposed rules. Modifications to the rules update existing requirements and the package does not contain any changes to fees.

“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals”

The consequences of not adopting the proposed rule modifications are that applicants will not be able to retake a failed examination section within the same examination window even after the National Association of State Boards of Accountancy modifies their policy to allow applicants to retake a failed section at any time. Additionally, obsolete, unnecessary, or duplicative language will remain in the rules.

“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”

No relationship exists between these rules and federal regulations.

“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”

Neither federal regulations nor other Minnesota state laws address the areas covered in the proposed rules. Therefore, this consideration is not applicable for these rules.

PERFORMANCE-BASED RULES

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

To safeguard life, health and property, and promote the public welfare, the Board provides reasonable assurance that persons practicing public accounting are competent, ethical practitioners qualified through education, examination and experience. Additionally, as an official licensing entity, the Board is charged with implementing those statutes and rules which specifically regulate the practice of public accounting.

The proposed rule amendments embodied in this Statement of Need and Reasonableness emphasize superior achievement in meeting the Board’s regulatory objectives with maximum flexibility for the regulated party and the Board in meeting those goals. The National Association of State Boards of Accountancy is in the process of updating its examination policies to eliminate examination windows and allow applicants who fail an examination section to retake the examination whenever they choose. The proposed amendments allow for maximum flexibility to the regulated parties and to the Board by allowing exam candidates to take advantage of changes to examination policies.

Additionally, the American Institute of Certified Public Accountants (“AICPA”) owns the examination on professional ethics required by the Board for licensure. The Board’s rules state that a grade of 75% correct is required to successfully complete the exam, however, the passing score required by the AICPA is 90%. The proposed amendments correctly identify the passing score and eliminate confusion for applicants.

Finally, the proposed amendments eliminating obsolete, unnecessary, or duplicative rule language provides maximum flexibility to regulated parties by removing unnecessary regulation.

ADDITIONAL NOTICE

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in an order issued by Administrative Law Judge Ann O'Reilly on May 31, 2019.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the Minnesota Association of Public Accountants ("MAPA"), a professional organization representing Certified Public Accountant members.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the Minnesota Society of Certified Public Accountants ("MNCPA"), a professional organization representing Certified Public Accountant members.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the National Association of State Boards of Accountancy ("NASBA"), the national council representing Certified Public Accountants regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the American Institute of Certified Public Accountants ("AICPA"), a national professional organization for Certified Public Accountants.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the National Association of Black Accountants, Inc. ("NABA, Inc."), a national professional association including Certified Public Accountant members.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the following colleges and universities in Minnesota offering accredited degrees in accounting:

- Augsburg University
- Bemidji State University
- Bethel University
- Capella University
- College of St. Benedict
- College of St. Scholastica
- Concordia College – Moorhead
- Concordia University, St. Paul
- Gustavus Adolphus College
- Hamline University
- Metropolitan State University
- Minnesota State University – Mankato
- Minnesota State University – Moorhead
- North Central University
- Rasmussen College
 - Blaine Campus
 - Bloomington Campus

- Brooklyn Park Campus
- Eagan Campus
- Lake Elmo/Woodbury Campus
- Mankato Campus
- Moorhead Campus
- St. Cloud Campus
- Southwest Minnesota State University
- St. Catherine University
- St. Cloud State University
- St. John's University
- St. Mary's University
 - Minneapolis Campus
 - Rochester Campus
 - Winona Campus
- University of Minnesota
 - Crookston Campus
 - Duluth Campus
 - Twin Cities Campus
- University of Northwestern – St. Paul
- University St. Thomas
- Winona State University

A postcard notification of the proposed rule changes with the website address where recipients will find the Dual Notice of Intent to Adopt, the official language of the proposed rule, and the SONAR will be mailed to all current CPA certificate holders.

A postcard notification of the proposed rule changes with the website address where recipients will find the Dual Notice of Intent to Adopt, the official language of the proposed rule, and the SONAR will be mailed to all current firm permit holders.

A postcard notification of the proposed rule changes with the website address where recipients will find the Dual Notice of Intent to Adopt, the official language of the proposed rule, and the SONAR will be mailed to all current Minnesota CPA exam candidates.

The Board will post the Dual Notice of Intent to Adopt, the SONAR, and the proposed rule changes on the Board's website for public review by June 26, 2019.

Our Notice Plan includes giving notice required by statute. We will mail the proposed rules and the Notice of Intent to Adopt to everyone who has registered to be on the Board's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 14.116 and serve a copy of the SONAR on the Legislative Reference Library per Minnesota Statutes, section 14.131.

Our Notice Plan did not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per Minnesota Statutes, section 14.111.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Board will consult with Minnesota Management and Budget (MMB). We will do this by sending MMB copies of the documents that we send to the Governor's Office for review and approval. We will do this before the Board's publishing the Notice of Intent to Adopt. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Board will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the Board has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Board has determined that they do not because the rules pertain to individuals applying for specific examinations required for licensure or certification by this Board, not to entities. Compliance with the rules falls on these individuals and enforcement of the rules falls solely on the Board.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by Minnesota Statutes, section 14.127, the Board has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Board has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city.

The Board has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis sections on pages 2 to 4 of this SONAR.

LIST OF WITNESSES

If these rules go to a public hearing, the Board anticipates that any of the current Board members at the time of the hearing would be available for testimony in support of the need for and reasonableness of the rules. The Board does not intend to call non-agency witnesses

RULE-BY-RULE ANALYSIS

1105.1100 CHANGES OF ADDRESS AND OTHER INFORMATION

The first change to this rule eliminates the requirement for licensees and registrants to provide the Board with a facsimile number. Facsimile is outdated technology and the Board does not communicate with its licensees or registrants in this manner. Therefore, it is unnecessary for the Board to collect this information.

The second change clarifies that a post office box is not a sufficient address to provide the Board. The Board must have a physical address on which to serve licensees or registrants with various documents, including, but not limited to, final orders. Therefore, the Board must require its licensees and registrants to provide a physical street address rather than a post office box. Participants in the address confidentiality program established under Minnesota Statutes, chapter 5B are exempt from providing a physical address.

1105.1800 EXAMINATION CONTENT.

Subpart 2: The current rule states that the passing grade for the ethics examination required for licensure is 75% correct. However, the American Institute of Certified Public Accountants (AICPA), the creator and owner of the ethics examination, has defined the minimum passing grade for the examination as 90% correct. The proposed language updates the passing grade to 90%, to align with the AICPA requirement for successful completion of the exam.

1105.2000 RETAKE AND GRANTING OF CREDIT REQUIREMENTS.

Subpart 2, item B: The current rules state that an applicant may not retake a failed examination section within the same examination window. However, the National Association of State Boards of Accountancy (NASBA), the owner and creator of the CPA examination, is in the process of modifying its examination policy to eliminate examination windows and allow candidates to retake the examination at any time. The Board recognizes that NASBA can modify its examination policies more frequently than the Board changes its rules. Therefore, the proposed language defers to NASBA for the frequency by which an applicant may retake an examination section or sections. The proposed rules allow for the greatest flexibility for exam candidates and eliminate the need for the Board to make rule changes each time the examination policies change.

1105.3700 EXEMPTION FROM CERTIFICATE RENEWAL REQUIREMENT.

Item B of the current rule requires individuals granted exempt status to inform the Board of any address change within 30 days of the date of occurrence. However, individuals granted exempt status no longer hold CPA certificates and the Board has no need to contact them. Therefore, it is unnecessary for the Board to collect address changes for exempt individuals, and the proposed rule modifications eliminate this requirement.

1105.4000 APPLICATION FOR FIRM PERMIT

Item F requires a firm's partners, members, shareholders, directors, or officers residing in Minnesota, who do not hold, and are not eligible to hold, a CPA certificate (i.e. "non-CPA owners"), to register with the Board each year and to indicate the percentage of voting and financial interest held by the individual in the firm. However, Minnesota Statutes, section 326A.05, subdivision 3, simply states that a simple majority of the ownership of the firm must belong to licensees. The firm itself must disclose the total percentage of voting and financial interest held by unlicensed individuals for the Board to determine whether the firm meets the ownership requirements. It is unnecessary for the Board to collect the voting and financial interest for each individual non-licensee. It does not matter whether a single non-licensee owns 3%, 33%, or 49%, as long as a simple majority is owned by licensees.

Therefore, the proposed modifications eliminate the requirement for individuals to indicate the percent of their voting and financial interest in the firm.

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

Date June 3, 2019

Doreen Johnson
Doreen Johnson, Executive Director