

DRAFT

STATE OF MINNESOTA

BOARD OF THE ARTS

IN RE: AMENDMENTS TO
MINN. RULES PARTS 1900.1400
AND 1900.1700

**STATEMENT OF
NEED AND
REASONABLENESS**

The Minnesota Board of the Arts, also known as the Minnesota State Arts Board, proposes to amend its rules regarding the deadline by which applications for Arts Board grants must be received. Authority for the Board's rules is found in Minn. Stat. § 139.10, subd. 1(e)(1988), which states that:

Subdivision 1. The board shall through the following activities stimulate and encourage the creation, performance and appreciation of the arts in the state:

* * *

- (e) promulgate by rule procedures to be followed by the board in receiving and reviewing requests for grants, loans or other forms of assistance;

At the present time, the rules provide that in order to be timely and complete, applications must be postmarked (or delivered) by the given program's deadline, as stated in current program information. These requirements are expressed in the rules in two different provisions. Minn. Rules pt. 1900.1400 states (in part) that:

All applications must be postmarked by the deadlines set forth by the board in the current program information.

(Emphasis added.)

The wording of this rule appears to contemplate that all applications will be delivered by U.S. Mail.

Minn. Rules pt. 1900.1700 states (in part):

A complete application includes the following:

H. postmark or delivery by the stated deadline(s) in program information.

(Emphasis added.) This rule appears to be broader in scope than part 1900.1400 for it contemplates delivery of an application in addition to use of the U.S. Mail. The Board's program information customarily provides that the deadline is 4:30 p.m. on the deadline date. Therefore, an application postmarked or delivered by 4:30 p.m. on the deadline date is considered to have met the deadline.

The use of a postmark to determine timeliness has proven to be a problem for several reasons. First, postmarks are not

always visible. Second, with the increasing use of courier or other types of delivery services and facsimile transmission, there may not be a postmark at all such that a system based on postmarks, as expressed in pt. 1900.1400, must fail. The result is that uncertainty is introduced into the application process because the Board may inadvertently exclude from consideration applications that may have been timely and consider applications that were not.

The Board believes that it would be preferable if the rules required that an application must be received by the deadline. This would enable Arts Board staff to clearly identify applications that meet the deadline requirements and those that do not. Applicants will still be free to use the U.S. mail to send their application as long as they allow sufficient advance time to guarantee receipt by the deadline.

The Board believes that amendments to parts 1900.1400 and 1900.1700 are needed in order to eliminate the uncertainty associated with the use of postmarks and other forms of non-posted delivery. It is reasonable because both the Board and applicants will know clearly whether or not a application is timely. The applicants will be able to judge for themselves which method of delivery for their application will be required

- U.S. mail, courier service, facsimile transmission, or some other method in order to insure that the application is timely received.

Impact on Agricultural Lands and Small Business

Agricultural Lands

There are no agricultural lands affected by these amendments.

Small Business

Many of the applicants for Arts Board grants would qualify as small businesses, as defined in Minn. Stat. § 14.115, subd. 1 (Supp. 1989). Given this fact, the Board must consider five methods for reducing the impact of these amendments on small businesses as outlined in Minn. Stat. § 14.115, subd. 2 (1988). Each of the five methods are discussed below.

"(a) [T]he establishment of less stringent compliance or reporting requirements for smallbusiness;"

This method is not applicable to the amendments being proposed.

"(b) [T]he establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;"

Any rule regarding grant application deadlines must be capable of uniform and equitable application.

Requiring grant applications from small businesses to be received in the Arts Board's offices by the deadline date in order to be considered, should require little, if any, additional effort for small business. It may mean that an application would have to be deposited in the U.S. mail a day or two earlier but the effect on a small business would be no different than on any other applicant.

"(c)[T]he consideration or simplification of compliance or reporting requirements for small businesses."

Not applicable.

"(d) [T]he establishment of performance standards for small businesses to replace design or operational standards required in the rule;"

Not applicable.

"(e)[T]he exemption of small businesses from any or all requirements of the rule."

All grant applicants must be treated uniformly. An application deadline cannot be waived for small businesses without giving small businesses an unfair advantage over other applicants who must abide by the application deadlines.

Fiscal Note

The majority of local public bodies, as defined by Minn. Stat. §14.11, subd. 1, affected by this amendment are school districts which apply for grants to support artistic endeavors in their schools. However, the estimated additional cost to these and other local public bodies is expected to be virtually nothing and certainly less than the \$100,000 threshold stated in Minn. Stat. § 14.11.

It is anticipated that the Arts Board's Assistant Director Robert C. Booker and Sam Grabarski, Exec. Dir. shall testify in support of the Amendments on behalf of the agency. This Statement of Need and Reasonableness constitutes the verbatim affirmative presentation by the agency.