

OCT 19 1995

**STATE OF MINNESOTA  
BOARD OF ACCOUNTANCY**

In the Matter of the Proposed  
Permanent Rules Relating to  
Uniform CPA Examination Changes

**STATEMENT OF NEED  
AND REASONABLENESS**

**INTRODUCTION**

Most of the Board's proposed rules are necessitated by external changes, two made by the American Institute of Certified Public Accountants ("AICPA") and one by the legislature.

The AICPA increased the cost of its grading service. The Uniform Certified Public Accountant examination ("exam") consists of four parts. Candidates take between one and all four parts. The current charge for grading is \$18.75 per part. AICPA is increasing this charge to \$22.50, or \$3.75 per part. Thus, the Board will pay up to \$15.00 extra per candidate for grading. As mandated by law, the Board is attempting to recover its costs by passing the increase along to the candidates.

The AICPA is also instituting a "non-disclosed" examination. AICPA is planning for future administration of the exam by computer. This requires a bank of questions of about 50,000 according to psychometric theory. Currently, past exam questions are available to candidates and to test preparation services to assist in exam preparation. Under the "non-disclosed" exam, questions will not be released because they will be reused.

The legislature made a number of changes to the laws authorizing limited liability companies and limited liability partnerships. Laws of Minnesota, chapters 58 and 127, 1995. These changes included expanding the names businesses incorporated under these laws are permitted to use. The proposed changes conform the Public Accountancy Act to chapters 58 and 127.

Minnesota Rules 1100.3600, sups. 1A and B

This rule change, increasing the fee to take the entire exam by \$15.00 and individual parts by \$4.00 per part, is necessary to cover the increased costs the Board must pay to AICPA for grading the examination. This rule change is reasonable because Minnesota law mandates the Board to recover its costs and this proposed rule does that.

Minnesota Rules 1100.0100, subps. 2c, 2d, 6c, 6d, 9a and 9b; 1100.2600, subp. 1; 1100.3550, subps 1B and H, 2E, and 2aC

These rule changes are necessary to conform the Board's rules to Laws of Minnesota, Chapters 58 and 127, 1995 which allow businesses organized under these laws to use

additional designations. This rule change is reasonable because it conforms the Board's rules to Minnesota Law.

Minnesota Rules 1100.1300, subp. 6

This rule change is necessary to clarify Board policy on failure to appear at the exam, ensuring that candidates are aware of the consequences of failing to appear at the exam. It codifies current Board policy. It is reasonable because it places candidates who fail to appear for the exam in the same circumstances as those who appear and fail all four parts of the exam. The Board's rules require such candidates to miss an exam, requiring them to wait one year before sitting for the exam. It is reasonable to do this because most candidates who fail to appear for the exam do so because of poor preparation. By making such candidates wait one year, with those who fail all four parts of the exam, it gives them time to prepare adequately.

Minnesota Rules 1100.1300, subp. 8

This rule change is necessary to permit the Board to implement the "non-disclosed" exam. Current law and Board rules do not clearly authorize the Board to discipline persons who disclose examination questions. Clearly, to effectively enforce the non-disclosure of exam questions, the Board needs enforcement authority. This rule accomplishes that. It is reasonable because it makes the Board's enforcement of this rule consistent with its enforcement of the rest of the Public Accountancy Act and the Board's rules.

Small Business Considerations

It is the position of the Board that Minn. Stat. § 14.115 (1994) relating to small business considerations in rulemaking does not apply to the rules it promulgates. Minn. Stat. § 14.115, subd. 7(2) (1992) states that section 14.115 does not apply to "agency rules that do not affect small businesses directly." The Board's authority relates only to accountants and not to the businesses they operate.

The Board is also exempt from the provisions of section 14.115, pursuant to its subdivision 7(3) which states that section 14.115 does not apply to "service businesses regulated by government bodies, for standards and costs . . ." Accountants are regulated by the Board for standards.

However, should these proposed rules in some way be construed as being subject to Minn. Stat. § 14.115, the Board notes below how the five suggested methods listed in section 14.115, subdivision 2, for reducing the impact of the rules on small businesses should be applied to the proposed rules. The five suggested methods enumerated in subdivision 2 are as follows:

(a) The establishment of less stringent compliance or reporting requirements for small businesses;

(b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) The consolidation or simplification of compliance or reporting requirements for small businesses;

(d) The establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) The exemption of small businesses from any or all requirements of the rule.

The feasibility of implementing each of the five suggested methods and whether implementing any of the five methods would be consistent with the statutory objectives that are the basis for this rulemaking are considered below.

1. It would not be feasible to incorporate any of the five suggested methods into these proposed rules.

Methods (a) to (c) relate to lessening compliance or reporting requirements for small businesses either by establishing less stringent requirements, establishing less stringent schedules or deadlines for compliance with the requirements, or consolidating or simplifying the requirements. Since the Board is not proposing any compliance or reporting requirements for either small or large businesses, it follows that there are no such requirements for the Board to lessen with respect to small businesses. If, however, these proposed rules are viewed as compliance or reporting requirements for businesses, then the Board finds that it would be unworkable to lessen the requirements for those accountants who practice in a solo or office setting of fewer than 50 employees, since that would include at a minimum the vast majority of licensees and probably all of them. Method (d) suggests replacing design or operational standards with performance standards for small businesses. The Board's rules do not propose design or operational standards for businesses and therefore there is no reason to implement performance standards for small businesses as a replacement for design or operational standards that do not exist. Finally, method (e) suggests exempting small businesses for any or all requirements of the rules. The application of this provision would exempt virtually all licensees from the purview of the rules, a result which would be absurd.

2. Reducing the impact of the proposed amendments on small businesses would undermine the objectives of the Minnesota licensing law for accountants.

Pursuant to Minn. Stat. § 326.17 et seq., the Board was created for the purpose of establishing requirements for licensure and adopting standards for disciplinary action to govern the practices or behavior of all licensees. Pursuant to Minn. Stat. § 326.18, the Board is specifically mandated to promulgate rules as may be necessary to carry out the Board's purposes. Given these statutory mandates, it is the Board's duty to establish licensure qualifications and disciplinary standards which apply to and govern all applicants and licensees regardless of the nature of their practice. As stated above, it is the Board's position that the proposed rules will not affect small businesses and certainly do not have the potential for imposing a greater impact on accountant in a solo or small practice than on those practices large enough to remove them from the definition of small business. It has also been explained above that the Board considers it unfeasible to implement any of the five suggested methods enumerated in subdivision 2 of the small business statute. Nonetheless, to the extent that the proposed rules may affect the business operation of an accountant or group of accountants and to the extent it may be feasible to implement any of the suggested methods for lessening the impact on small businesses, the Board believes it would be unwise and contrary to the purposes to be served by these rules for the Board to exempt one group of accountants - indeed, the vast majority of accountants - from the requirements of these rules. Similarly, the Board believes it would be unwise and contrary to its statutory mandate for the Board to adopt one set of standards for those accountants (which may consist of a nonexistent class) who work in a large business setting and adopt another, less stringent, set of standards to be applied to those accountants who practice in a solo or small office practice. It is the Board's view that these rules must apply equally to all accountants if the public whom they serve is to be adequately protected.

Licensees, regardless of whether they are considered as individuals or small businesses, have had and will continue to have an opportunity to participate in the rulemaking process for these proposed rules. The Board has used a very open process to draft these rules and has kept the various associations well informed of the proposed rules as they were developed. The associations have in turn informed their constituents.

Expenditure of Public Money by Local Public Bodies.

Minn. Stat. § 14.11, subd. 1 requires that "if the adoption of a rule by an agency will require the expenditure of public money by local public bodies, the appropriate notice of the agency's intent to adopt a rule shall be accompanied by a written statement giving the agency's reasonable estimate of the total cost to all local public bodies" The Board does not anticipate that the proposed amendments will require the expenditure of public money by local public bodies.

Impact of Agricultural Land.

Minn Stat. § 14.11, subd. 2 requires that "if the agency proposing the adoption of the rule determines that the rule may have a direct and substantial adverse impact of agriculture land in the state, the agency shall comply with the requirements of sections 17.8 to 17.84." The Board does not anticipate that the proposed amendments will have a direct and substantial adverse impact of agricultural land in the state.

September 22, 1995

  
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DAVID J. O'CONNELL  
Executive Secretary

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