



THE MINNESOTA BOARD OF ACCOUNTANCY

July 28, 2015

Legislative Reference Library  
645 State Office Building  
100 Constitution Avenue  
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Rules of the Board of Accountancy Governing  
Temporary Military Certificates and Proposed Amendment to Rules Governing  
Firm Permit Renewals and Housekeeping Updates; Revisor's ID Number R-04313

Dear Librarian:

The Minnesota Board of Accountancy intends to adopt rules governing temporary military certificates, firm permit renewals and housekeeping updates. We plan to publish a Notice of Hearing in the August 17, 2015 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 Notice of Hearing.

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

Yours very truly,

A handwritten signature in cursive script 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 New Rules Governing Temporary Military Certificates, Minnesota Rules, 1105.2450; and**

**Proposed Amendment to Rules Governing Firm Permit Renewals and Housekeeping Updates, Minnesota Rules, 1105.0100, 1105.1800, 1105.3100, 1105.3600, 1105.4000, 1105.4300, 1105.4600, 1105.4700, 1105.4800, 1105.4900, 1105.5100, 1105.5200, 1105.5300, 1105.5400, 1105.5500, 1105.5600, 1105.7100, 1105.7400, 1105.7800**

**Revisor's ID Number R-04313**

### **INTRODUCTION**

The nature of the proposed rules of the Board of Accountancy ("Board") is to add new language pertaining to active duty military members, their spouses, and veterans who have received an honorable or general discharge within the two years prior to application for certification and to amend its current rules generally pertaining to all licensees and firms and specifically pertaining to firm permit renewals.

The proposed new rules are intended to expedite the process for which individuals meeting certain requirements can obtain a certificate to practice public accounting in Minnesota. These individuals will receive a temporary certificate, which will allow practice for up to six months, while the applicant completes the full application process.

The proposed rules will also update the renewal requirements for firm permits so that a two-thirds majority (rather than 100%) of certain licensees within the firm must renew their individual certificates before the firm's permit can be renewed. Changes to this requirement are intended to prevent the firm's permit from expiring and affecting all CPAs in the firm because one individual did not renew his or her certificate.

Finally, the proposed rules include amendments that are "housekeeping" in nature. These housekeeping modifications do not make any substantive changes to the requirements for licensure or renewal, but rather remove the obsolete requirement for oral examinations and update the term "quality review" to "peer review" throughout chapter 1105.

### **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. 7<sup>th</sup> Place, Suite 125, St. Paul, MN 55101, 651-757-1511, Fax: 651-282-2644, and email: [andrea.barker@state.mn.us](mailto:andrea.barker@state.mn.us). TTY users may call the Board at (800) 627-3529.

### **STATUTORY AUTHORITY**

During the 2014 Legislative Session, the Legislature mandated each licensing board to establish a temporary military certificate and granted authority to adopt rules to carry out the provisions of the statute. The Board's proposed new rules are made under the authority in Minnesota Statutes section 197.4552, subdivision 3. The 18-month rule applies to the proposed new rules.

## **197.4552 EXPEDITED AND TEMPORARY LICENSING FOR FORMER AND CURRENT MEMBERS OF THE MILITARY.**

Subdivision 1. **Expedited licensing processing.** Notwithstanding any other law to the contrary, each professional licensing board defined in section 214.01, subdivisions 2 and 3, shall establish a procedure to expedite the issuance of a license or certification to perform professional services regulated by each board to a qualified individual who is:

- (1) an active duty military member;
- (2) the spouse of an active duty military member; or
- (3) a veteran who has left service in the two years preceding the date of license or certification application, and has confirmation of an honorable or general discharge status.

Subd. 2. **Temporary licenses.** (a) Notwithstanding any other law to the contrary, each professional licensing board defined in section 214.01, subdivisions 2 and 3, shall establish a procedure to issue a temporary license or certification to perform professional services regulated by each board to a qualified individual who is:

- (1) an active duty military member;
- (2) the spouse of an active duty military member; or
- (3) a veteran who has left service in the two years preceding the date of license or certification application, and has confirmation of an honorable or general discharge status.

(b) A qualified individual under paragraph (a) must provide evidence of:

- (1) a current, valid license, certificate, or permit in another state without history of disciplinary action by a regulatory authority in the other state; and
- (2) a current criminal background study without a criminal conviction that is determined by the board to adversely affect the applicant's ability to become licensed.

(c) A temporary license or certificate issued under this subdivision shall allow a qualified individual to perform regulated professional services for a limited length of time as determined by the licensing board. During the temporary license period, the individual shall complete the full application procedure as required by applicable law.

Subd. 3. **Rulemaking.** Each licensing board may adopt rules to carry out the provisions of this section.

The proposed amendments to rules governing firm permit renewals and housekeeping updates are made under the statutory authority described in Minnesota Statutes section 326A.02, subdivision 5. The Legislature has not revised this statutory authority since it was granted, so Minnesota Statutes, section 14.125 does not apply.

### **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 these statutes, the Board has the necessary statutory authority to adopt the proposed rules.

## BACKGROUND INFORMATION

**Temporary Military Certificates:** The rules will establish the procedure for the individuals specified by the Legislature during the 2014 Legislative Session to obtain a temporary certificate to perform public accounting. (See Minnesota Statutes section 197.4552 under “Statutory Authority” on page 2.)

**Firm Permits:** The current rules require 100% of a firm’s partners, members, managers, shareholders, directors and officers (“owners”) who hold a certificate and whose principal place of business is in Minnesota to individually hold non-expired certificates with an active status covering the term of the firm permit. This means that if all the owners have not completed continuing education and renewed their certificates by the December 31 deadline, the firm’s permit may not be renewed. A variety of reasons exist for why an individual certificate may not have been renewed on time and the action (or inaction) of one owner could potentially cause the firm permit to not be renewed by the Board thereby affecting the entire firm and all those practicing within it. The modified rules will allow renewal of the firm permit after a two-thirds majority of the firm’s owners have renewed their individual certificates. If after 60 days, the remainder of the owners have not renewed, the firm’s permit will automatically be revoked by the Board.

**Housekeeping modifications:** The term “quality review” is outdated. On a national level, the commonly used term is “peer review.” The rules will be modified to reflect the standard language. Secondly, the Board’s current rules indicate that an oral examination *may* be required [before receiving a certificate], but does not specify who must take this oral examination. Additionally, it is very costly and time-consuming to create a valid and reliable, psychometrically defensible oral examination. Given the inherent subjectivity of oral examinations and the fact that the Board has not required an oral examination of any applicant in several decades, this language will be removed from the Board’s rules.

## REGULATORY ANALYSIS

**“(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 new rules for temporary military certificates are active duty military members, spouses of active duty military members and veterans who have been discharged within two years of application for a certificate. The rules establish a procedure for these individuals to quickly obtain a certificate to practice in Minnesota while concurrently completing the formal application process.

The classes of persons affected by and benefiting from the proposed modifications to the requirements for firm permit renewal are licensees employed by firms and their clients. The rules as currently written have the potential to affect a firm’s license status, and thereby all those working for and served by the firm, if one owner’s certificate is not renewed on time. The modifications to the rules allow the firm’s permit to be renewed after two-thirds of the owners have renewed their individual certificates. The remainder of the owners must renew within sixty days or the firm’s permit will automatically be revoked, however, this “grace” period for the firm to make sure all owners are in compliance is beneficial to all the non-owners practicing within the firm and their clients.

The classes of persons who will probably be affected by, as well as benefit from, the proposed housekeeping rule modifications are generally all applicants, licensees and firms. These changes remove the obsolete oral examination requirement and update the term "quality review" to the national standard "peer review." These changes improve everyone's understanding of requirements.

**"(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 costs associated with rulemaking in general. Additionally, to accommodate the changes to the procedures for firm permit renewal and to establish a procedure for issuing temporary military certificates, modifications must be made to the Board's database and internal procedures. The cost for database modifications is estimated to be minimal (less than \$1,000) and will not have any effect on state revenues. The Board does not anticipate an increase or decrease in cost for enforcing the proposed rules.

The Board is charged with the implementation and enforcement of the proposed rules. As such, it does not anticipate any probable costs to any other agency or any effect on state revenues.

**"(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 clean up existing language and to remove the potential for unintended consequences on a firm's permit when an owner's individual license is out of compliance. The purpose of the new rules for temporary military certificates is to establish the procedure mandated by statute. No methods other than rule writing exist for achieving these goals.

**"(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"**

No alternative methods appear to exist.

**"(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"**

Fees for applicants, licensees, certificate holders and firms are specified in statute. There are not additional probable costs for compliance with the proposed rules. No other governmental units or businesses will be affected by the rule modifications.

**"(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 rules include keeping obsolete language, potential non-renewal of a firm's permit if all individual owners are not in compliance, and non-compliance with the Legislature's mandate to create a procedure to issue temporary military certificates.

**“(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.”**

The proposed rules cover areas that are not addressed by federal law or other Minnesota state laws. Therefore, this consideration is not applicable for these rules.

## **PERFORMANCE-BASED RULES**

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 state licensing agency, the Board is charged with the responsibility of implementing those statutes and rules which specifically regulate the practice of 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 Board has identified language that is outdated for applicants, licensees, certificate holders, firms and the public. It is critical that the Board identifies actual or potential areas of confusion on the path to licensure or renewal within its jurisdiction in order to meet its obligations to the public and regulated parties. To do otherwise creates difficulties for all interested parties – the public, members of the regulated profession, and the Board. The housekeeping updates ensure that the Board’s rules remain clear and current.

The proposed new rules for temporary military certificates allow for maximum flexibility to the regulated parties and to the Board. Certain military personnel and their spouses already licensed as Certified Public Accountants in another jurisdiction can apply for and receive a temporary certificate in Minnesota thereby quickly begin work. The applicant must then complete the “normal” application process and provide documentation of the education, examination and experience required for certification in Minnesota. If the Board finds that the applicant does not meet the minimum requirements for certification, the temporary permit expires and the applicant cannot continue to practice.

The proposed amendments of the firm permit renewal requirements allow for maximum flexibility to the regulated parties and to the Board. These rules allow the firm to renew its permit if a two-thirds majority, rather than 100%, of the owners hold active certificates. The rules allow sixty days for the firm to bring all of its owners into compliance without affecting the other CPAs within the firm and their clients (the public). However, the firm’s permit will be automatically revoked by the Board if the owners are not in compliance after sixty days.

## **ADDITIONAL NOTICE**

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a letter dated July 23, 2015 by Administrative Law Judge Jim Mortenson.

Copies of the Notice of Hearing and the proposed rule change will be mailed to the Minnesota Association of Public Accountants ("MAPA"), a professional society representing Certified Public Accountants regulated by this Board.

Copies of the Notice of Hearing and the proposed rule change will be mailed to the Minnesota Society of Certified Public Accountants ("MNCPA"), a professional society representing Certified Public Accountants regulated by this Board.

Copies of the Notice of Hearing 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 Notice of Hearing and the proposed rule change will be mailed to the Minnesota Department of Veteran's Affairs, the state agency representing veterans.

The Board will also post the Notice of Hearing and the proposed rule change on the Board's website.

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

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

Our Notice Plan also includes giving notice required by statute. We will mail the proposed rules and Notice of Hearing 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.

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.

Our Notice Plan does not include notifying the Council on Affairs of Chicano/Latino People because the rules do not have a primary effect on Chicano/Latino people per Minnesota Statutes, section 3.922.

## **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 on the same day we send them to the Governor's office. 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 and firms applying for licensure or certification by this Board and to individuals and firms who are already licensed or certified by this Board, not to other entities. Compliance with the rules falls on these individuals and firms. 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 3-5 of this SONAR.

## **LIST OF WITNESSES**

If these rules go to a public hearing, the Board may have the following potential witnesses for testimony in support of the need for and reasonableness of the rules:

Mr. Gregory Steiner, CPA, Chair  
Ms. Sharon Jensen, CPA, Vice Chair  
Mr. Thomas Lydon, CPA  
Ms. Kate Mooney, CPA  
Mr. Charles Selcer, CPA  
Mr. Mark Sellner, CPA  
Mr. Scott Van Binsbergen, Public Member  
Mr. Michael M. Vekich, CPA  
Mr. Alan Wilensky, Public Member

## **RULE-BY-RULE ANALYSIS**

### **PEER REVIEW**

The following rules have been modified to change the term "quality review" to the national standard "peer review." No other modifications have been made to these rule parts:

- M.R. 1105.3100
- M.R. 1105.3600
- M.R. 1105.4300
- M.R. 1105.4600
- M.R. 1105.4700
- M.R. 1105.4800
- M.R. 1105.4900
- M.R. 1105.5100
- M.R. 1105.5200
- M.R. 1105.5300

- M.R. 1105.5400
- M.R. 1105.5500
- M.R. 1105.5600

- M.R. 1105.7100
- M.R. 1105.7400
- M.R. 1105.7800

### **M.R. 1105.0100 DEFINITIONS**

The definition of "quality review" has been changed to the definition of "peer review." Therefore the sentence stating that "quality review" means a "peer review" has been removed because it is redundant.

### **1105.1800 EXAMINATION CONTENT**

Subpart 3 has been removed in its entirety. The Board has not required an oral examination of any applicant for many years and oral examinations are inherently subjective, unnecessary, and costly to both write and defend. The Board relies on the valid and reliable, psychometrically-defensible Uniform Certified Public Accountant ("CPA") Examination to establish competency in public accounting. The CPA Examination and the American Institute of Certified Public Accountants ("AICPA") Ethics Examination will continue to be required for certification.

### **1105.2540 TEMPORARY MILITARY CERTIFICATE**

This rule creates the procedure for applying for a temporary certificate to practice public accounting. The temporary certificate is limited by statute to active duty military members, spouses of active military duty members or veterans with an honorable or general discharge status within the two year preceding the application for a temporary certificate.

Subpart 1 delineates the information required to apply for a temporary certificate and includes an application, the certificate fee and the evidence required by statute (military status, current license or certificate in another jurisdiction, and a criminal background study).

Subpart 2 states that the Board will evaluate the information submitted and notify the applicant of the result in writing. If the applicant qualifies for the temporary certificate, the Board will issue the temporary certificate and notify the applicant. If the applicant does not qualify, the Board will give the reasons for ineligibility.

Subpart 3 defines the period of time for which the temporary certificate is valid. The temporary certificate will expire when the first of the following three things occurs:

1. The expiration date listed on the temporary certificate (six months after the date of issue);
2. Following the Board's review of the applicant's full application and the Board's determination that the applicant is not qualified for certification; or
3. Following the Board's review of the applicant's full application and the Board's determination that the applicant is qualified for certification.

Subpart 4 states that the applicant must complete the full application required for a CPA certificate (as any other applicant would complete). If after the Board's review of the full application the applicant is found eligible for certification, the Board will issue the certificate and notify the applicant. The temporary certificate will expire upon issuance of the CPA certificate as stated in Subpart 3. If after the Board's review of the full application the applicant is found ineligible for certification, the Board will notify the applicant in writing. The temporary certificate will expire with this notification as stated in Subpart 3.

Subpart 5 limits the number of times an applicant can receive a temporary military certificate in Minnesota to one (1) and does not allow renewal of temporary certificates. Applicants who are

found ineligible for certification after the Board's review of their full application or do not complete the full application process will not be able to receive a second temporary certificate by re-applying for such certificate. Additionally, applicants will not be able to "renew" the temporary certificate and continue practicing.

#### **1105.4000 APPLICATION FOR FIRM PERMIT**

Item D of this modified rule is divided into two subitems to differentiate between requirements for certificates of individuals at firms seeking an initial permit and those at firms seeking renewal. In order for a firm to be issued an initial permit, all of its partners, members, managers, shareholders, directors and officers ("owners") who are required to hold a certificate and whose principal place of business is in Minnesota must individually hold a certificate with an active status. This is not a departure from the original rule language, other than clarifying the definition of a manager to that as defined in Minnesota Statutes section 326A.01.

For renewal of a firm permit, this modified rule requires a two-thirds majority of the owners to renew their individual certificates first. Among the two-thirds majority that has completed their individual renewal must be the firm's managing partner and the signer of the firm permit renewal application. If either of those two specific individuals' certificates have not been renewed, or if less than two-thirds of the owners have renewed, the firm's permit cannot be renewed. The current rule requires 100% of the owners to renew. There are a variety of reasons for which an individual's certificate may not be renewed on time, including incomplete renewal applications and incorrect payment of fees. While it is the firm's responsibility to ensure that its CPAs have current certificates, the firm's permit should not be jeopardized by the actions or inactions of one individual. Non-renewal of a firm permit affects non-owner CPAs working for the firm as well as all of the clients of the firm. Modification to this rule essentially grants the firm an additional sixty (60) days after the deadline (December 31) to ensure all owners have renewed their individual certificates. This rule modification does not change the fact that an individual (owner or non-owner) who has not renewed is out of compliance. The individual will still be subject to any late fees or potential discipline related to a not-current certificate, however the firm permit itself can still be renewed.

If, after sixty day, all of the owners have not renewed their certificates, the Board will automatically revoke the permit of the firm by following the established procedure and giving proper notice of due process.

Item G is modified to update the term "quality review" to the standard "peer review."

#### **CONCLUSION**

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

\_\_\_\_\_  
Date 7/27/15

\_\_\_\_\_  
Doreen Frost  
Executive Director