

State



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MINNESOTA

Register

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Board of Accountancy Licensure and Professional Conduct of Certified Public Accountants

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the Department of Commerce Hearing Room, 500 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota 55101 on March 29, 1977, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Peter C. Erickson, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8118, either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, would:

I. Revise Accy150 (Rules of Professional Conduct) by formally adopting a Code of Professional Ethics to which certified public accountants will be required to adhere. The existing rule incorporates by reference the provisions of the Statement of the Code of Ethics of the American Institute of Certified Public Accountants. The proposed rule retains and expands upon many of the provisions of the existing Rules of Professional Conduct;

II. Revise the existing rules to reflect the establishment of "licensure" for certified public accountants in accordance with Laws of 1976, ch. 222, §§ 160 to 166;

III. Amend Accy110 to 120 by increasing the amount of certain fees payable to the Board of Accountancy by licensees and license applicants;

IV. Revise Accy30, 140 and 410 to 429, governing rule making and contested case procedures before the Board of Accountancy, by repealing the existing rules and incorporating by reference the rules adopted by the State Office of Hearing Examiners;

V. Revise the existing rules by the renumbering and reorganization of various rules.

Copies of the proposed rules are now available and one free copy may be obtained by writing to the State Board of

Accountancy, 500 Metro Square Building, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing. The Board's authority to promulgate the proposed rules is contained in Minn. Stat. § 326.18 (1974). A "statement of need" explaining why the board feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that pursuant to Minn. Stat. § 10A.01, subd. 11 (1974) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

Leonard A. Rapoport
Chairman

Rules as Proposed

Chapter One: Definitions and General

Accy1 through Accy 4 remain unchanged.

Accy5 In public practice and rendering professional service. In public practice and rendering professional service mean:

[(a)] **A.** When used in reference to a CPA, that he or as an employer performs professional accounting services for a fee [incidental to an office which he, or an employer engaged in public practice, maintains] within this state.

[(b)] **B.** When used in reference to a CPA partnership, that it performs professional accounting services for a fee [while maintaining an office] within this state.

[(c)] **C.** When used in reference to a CPA corporation, that it performs professional accounting services for a fee [while maintaining an office] within this state.

Accy6 through Accy 7 remain unchanged.

Accy 8 License. License means a license for a certified public accountant issued by the board.

Accy [8-] 9 Reserved for future use.

Accy10 through Accy 11 remain unchanged.

Accy12 Service. [(a)] When required by Chapters One through Thirty-Nine of these Rules service shall be by first

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class United States mail, postage prepaid and addressed to the person at his last known address, unless some other manner of service is required by law.

[(b) When required by Chapters Forty-One and Forty-Two, service shall be by registered or certified United States mail, postage prepaid and addressed to the party at his last known address, unless some other manner of service is required by law. An affidavit of mailing shall be attached to a list of the parties to the contested case, which list shall be incorporated in the affidavit by reference.]

Accy13-17 remain unchanged.

Accy18 Interpretation. Except as otherwise specifically provided herein, these rules shall be interpreted in accordance with the provisions of Minn. Stat. ch. 645 (1974).

Accy19 Nothing contained in these rules shall be deemed to prohibit or limit in any way the exercise by the board of powers granted to it by Minn. Stat. §§ [319.411-319.431] **319A.01-319A.22**, §§ 326.17-326.23, [and] § 326.53[,] **and §§ 214.001-214.12.**

Chapter Two: [State] Board of Accountancy

Accy20-29 remain unchanged.

Chapter Three: [Certified Public Accountants; Licensing;] Board; Duties; Officers; Examination; Report]

Accy30 All [regulations] **rules** of the board shall be adopted in the manner prescribed by [Atty. Gen. 301-306, Rule-Making Procedure For Non-Contested Cases, promulgated April, 1969.] **the rules of the State Office of Hearing Examiners, HE 101-109, filed December 10, 1975; amended and filed March 15, 1976.**

Accy31-39 remain unchanged.

Chapter Four: [Certification] **Licensure**; Qualification of Accountant. [Certificates] **Licenses**; to Whom Granted. [Certificates] **License**; Granting; Examination

Accy40 The following requirements are to be observed in submitting applications to the board for examination, re-examination, certificate **and license** after completing experience, and reciprocal certificate **and license**:

[(a) **A.** Such applications must be submitted on a form provided by the board **and in the case of a non-resident**

supported by a statement of the applicant's need for a Minnesota certificate.

[(b) **B.** Such applications must be accompanied by the appropriate fee as hereinafter provided in the form of money order or check payable to "Treasurer, State of Minnesota".

[(c) **C.** Applications for examination or re-examination not reaching the board 60 or more days prior to the initial examination date may, at the board's discretion; be deferred for consideration for a subsequent examination.

Accy 41 through 42 remain unchanged.

Accy43 Examinations.

[(a) **A.** The examination shall consist of written tests provided by the examination service of the American Institute of Certified Public Accountants which presently include auditing, commercial law, accounting theory and accounting practice. The dates of examination are those selected by the Institute and correspond with the dates of the examination in the other states. In addition, an oral examination and attendance at a lecture or discussion session, may be required covering questions on professional qualifications, experience, general knowledge relating to accountancy, fitness as an accountant and professional ethics.

[(b) **B.** Ample notice will be given to each applicant of the time and place selected for holding the examination and each applicant must be present and prepared to engage in the work promptly at the hours appointed. An applicant who is unable to be present must notify the board as soon as reasonably possible. Failure to do so will be considered, at the discretion of the board, just cause for exclusion and forfeiture of the amount of the fee. An applicant who is unable to be present at the examination for which his application was approved, shall notify the board at least 60 days prior to a subsequent examination to which he desires to be admitted and furnish current information on forms provided by the board.

[(c) **A.** To pass an examination an applicant must receive a grade of at least seventy-five per cent (75%) in each of the subjects covered by the examination.

[(d) **D.** A written examination on professional ethics is required before issuance of a certificate. A grade of at least seventy-five (75%) is required to pass this examination.

[(e) **E.** In instances where an applicant has passed the examination prior to completion of his experience require-

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ments, a letter will be issued to him by the board indicating he has successfully completed the examination but that the certificate **and license are** [is] being withheld until such requirements have been met. Upon completion of the required experience (or not more than ninety days prior thereto if the applicant is regularly engaged in public accounting employment expected to continue for the necessary period), the applicant shall submit on a form provided by the board a schedule of all experience not included in a prior application. After the board is satisfied that all experience and other requirements have been met a certificate of certified public accountant **and license** will be issued without an additional fee.

Accy 44 Re-examinations.

[(a)] **A.** An applicant who fails all subjects shall not be allowed to sit for re-examination at the next examination and must show proof of further study in order to sit for subsequent examinations.

[(b)] **B.** An applicant having passed two of the subjects given in the written examination and received no grade less than 50 in the subjects failed, shall be re-examined only in the subjects in which he failed.

[(c)] **C.** An applicant having passed three of the subjects shall be re-examined only in the subjects in which he failed.

[(d)] **D.** An applicant for re-examination pursuant to Accy 44. [(b)] **B.** must pass the remaining subjects **within**

[in] the next five examinations given by the board or be re-examined in all subjects.

[(e)] **E.** An applicant for re-examination must apply for re-examination in all failed subjects.

Accy45 Examinations in other states.

[(a)] **A.** An applicant required to be temporarily out of the state on the date of the examination, may request the Minnesota board to arrange to have his examination monitored by the accountancy board of another state.

[(b)] **B.** An applicant who has passed two or more parts of the uniform examination under the jurisdiction of the accountancy board of another state may request that the board recognize and adopt said passing grades. The request shall be granted if, in the opinion of the board, the applicant satisfies all of the qualifications which would have been required had he made application to the board on the date of his original application to the other accountancy board.

Accy46 Education.

[(a)] **A.** An applicant must be a graduate of an accredited high school or possess an equivalent education. At the discretion of the board, an applicant not graduated from high school may be required to take the prescribed high school equivalency test given by the University of Minnesota.

[(b)] **B.** The following credits from an accredited college or university will constitute a major in accounting:

	Semester Hours	Quarter Hours
[(1)] 1. Accounting* and business law	24	36
[(2)] 2. Business (may include accounting and business law not listed in [(1)] 1. above)**	24	36
[(3)] 3. Non-business	48	72
[(4)] 4. Business or non-business	24	36
Total	<u>120</u>	<u>180</u>

* Includes financial, managerial, taxation, auditing, data processing, etc.

**Economics and mathematics may be classified as business or non-business.

Not all courses of one discipline need be placed in the same category.

[(c)] **C.** Applicants who are currently registered in their final quarter or semester preceding graduation and who at that graduation will be receiving a baccalaureate degree with a major in accounting or a higher accounting degree will be permitted to sit for the examination. They will be considered for this purpose as having attained the degree and will qualify in the category of the degree to be attained. The applicant must submit an official transcript from the college he is attending and a statement by the college or university that he is enrolled in his final quarter or semester.

A final official transcript showing degree and date awarded must be submitted to the board before the examination grades are released to the candidate.

Accy 47-49 remain unchanged.

Chapter Five: [Certificate] License without Examination

Accy50 Reciprocity. Ordinarily a reciprocal certificate **and license** will not be granted unless the state of origin

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grants similar privileges to holders of Minnesota certificates **and licenses**, and the applicant conforms to all requirements which would be imposed by the state of origin upon the holder of a Minnesota certificate seeking reciprocal recognition in that jurisdiction.

Accy51 through Accy 59 remain unchanged.

Chapter Six: Qualifying Experience for Examination and Granting of [Certificate] **License**

Accy60 It is the intent of this requirement that the applicant should have had practical public accounting experience of reasonable variety and importance, requiring independent thought and judgment on important accounting, auditing and income tax matters, consistent with the competence generally expected of a certified public accountant. [It should include a significant amount of accounting work involving third party reliance on the financial statements.]

Accy61 through Accy 62 remain unchanged.

Accy63 Qualifying governmental accounting experience may have been gained through employment in one or more of the following capacities:

[(a)] **A.** As an examiner or supervising examiner in the office of **legislative auditor or state auditor** [public examiner] of the state of Minnesota, or in substantially identical offices of other governmental bodies, engaged in examining the books, records, accounts, and affairs of state or local governments or their instrumentalities;

[(b)] **B.** As a field examiner or supervising examiner of federal or state tax agencies, engaged in examining the books, records, accounts, and documents of taxpayers for the purpose of verifying financial data contained in income tax returns;

[(c)] **C.** As an auditor or examiner with any other agency of government if the experience is at least as comprehensive and diversified as that described in subsections [(a)] **A.** and [(b)] **B.** of this chapter. The burden rests with the applicant to demonstrate to the board that other governmental experience should be recognized as qualifying. A written statement should be filed with the board, giving a complete description of the purposes, work standards and procedures of any position believed to be qualifying. It is desirable that this statement be provided by a responsible administrative officer of the applicable governmental unit.

Accy64-69 remain unchanged.

Chapter Seven: [Annual Registration Card.] **License Renewal of Certified Public Accountants**

Accy70 Each individual holder of an unrevoked Minnesota certificate **and license** who engages in or intends to be engaged in the practice of public accounting within the state of Minnesota during all or part of a calendar year is required to apply for and obtain from the board an annual [registration card] **license** for that year. The application for the annual [registration card] **license** and the appropriate fee shall be submitted to the board within thirty (30) days after engaging in public practice in any year, except that an individual shall [not be required] [to register] **be licensed** for the **balance** of the year in which he received his certificate **without payment of the fee.**

Accy71 Each November the board will notify each current [registrant] **licensee** and each individual who has received a certificate during that year of the [registration] **licensing** requirements for the succeeding year. However, it is the responsibility of each certificate holder **and licensee** in public practice to apply for a license and pay the appropriate fee. [Only registrants whose applications are received prior to the beginning of the year can be assured of being listed in the annual directory.]

Accy72 The following requirements are to be observed in making applications for an annual [registration card] **license** issued to an individual holder of a Minnesota certificate **and license**:

[(a)] **A.** Applications must be submitted on a form provided by the board.

[(b)] **B.** Applications must be accompanied by the appropriate fee hereinafter provided in the form of money order or check payable to "Treasurer, State of Minnesota."

Accy 73 [Willful] Failure to [register] **apply for license** and pay the appropriate fee by a CPA **the beginning of the year** in public practice shall be deemed unprofessional conduct and may be cause for suspension or revocation of his certificate **and license.**

[Accy74 As a prerequisite to the issuance of an annual registration card, the board may require the applicant to pay the registration fee for each intervening year since 1963 in which the applicant held an unrevoked Minnesota certificate but was not registered, unless the applicant submits information, satisfactory to the board, that he was not in public practice in such years.]

Accy [75] **74-79** Reserved for future use.

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Chapter Eight: [Annual Registration] **Licensure** of Partnerships

Accy80 Each partnership consisting of one or more partners holding unrevoked Minnesota certificates **and licenses** which engages in or intends to be engaged in the practice of public accounting within the state of Minnesota during all or part of a calendar year is required to apply for and obtain from the board an annual [registration card] **license** for that year. The application for [annual registration card] **license** and the appropriate fee shall be submitted to the board within thirty (30) days after engaging in public practice in any year.

Accy81 Each November the board will notify each currently [registered] **licensed** partnership of the **licensing** [registration] requirements for the succeeding year. However, it is the responsibility of each partnership in public practice to apply for [registration] **a license** and pay the appropriate fee **as provided in Accy 120**. [Only registrants whose applications are received prior to the beginning of the year can be assured of being listed in the annual directory.]

Accy82 The following requirements are to be observed in making application for an annual [registration card] **license** issued to a partnership:

[(a)] **A.** Applications must be submitted on a form provided by the board.

[(b)] **B.** Applications must be accompanied by the appropriate fee as hereinafter provided in the form of a money order or check payable to "Treasurer, State of Minnesota."

Accy83 [Willful] Failure to **apply for a license** [register] and pay the appropriate fee **as provided in Accy 120** by a partnership in public practice shall be deemed unprofessional conduct and may be cause for suspension or revocation of the certificates **and licenses of the partnership and of each individual partner**.

[Accy 84 As a prerequisite to the issuance of an annual registration card, the board may require the partnership to pay the license fee for each intervening year since 1969 in which the partnership was in public practice but was not registered.]

Accy [85] **84-89** Reserved for future use.

Chapter Nine: [Unregistered] **Unlicensed** Practice

Accy 90-99 remain unchanged.

Chapter Ten: Holder of [Certificate] **License**; How Styled

Accy100-109 remain unchanged.

Chapter Eleven: Fee for [Examination] **License** and [Certificate] **Renewal**

Accy110 Applications shall be accompanied by fees in the following amounts:

[(a)] **A.** Application for examination by first time applicants. [\$50.00] **\$100.00**.

[(b)] **B.** Application for re-examination in failed subjects **\$25.00** per subject, but not in excess of [\$50.00] **\$100.00** (Accounting practice is considered **to be** as two subjects.)
Accy44 [(d)] **D.** provides that applicants must apply for reexamination in all failed subjects.

[(c)] **C.** Application for reciprocal certificate and license. **\$75.00** [\$50.00].

Accy111 Fees shall be refunded if an application is rejected.

Accy112 Once an application for examination or re-examination has been approved by the board, the fee will not be refunded. Such fee may be applied to any future examination fee **at any time** during a period of five years after **approval of the application thereafter** which the fee shall be forfeited.

Accy113-119 remain unchanged.

Chapter Twelve: Annual [Registration] **License** Fee.

Accy120 Annual [registration] **license** fees shall be as follows:

[(a)] **A.** Individuals [\$10.00] **\$15.00**.

[(b)] **B.** Partnerships \$25.00.

Accy 121 [Registration] **License** fees pertain to a calendar year and shall not be pro-rated.

Accy122-129 remain unchanged.

Chapter Thirteen: Expenses of Administration [.] **Fees; Disposition**

Accy 130-139 remain unchanged.

Chapter Fourteen: Revocation [and Reinstatement of Certificates of Certified Public Accountants.] **or Suspension; Reinstatement**

Accy140 All revocation and suspension proceedings shall be conducted in accordance with [Chapter Forty-One and Chapter Forty-Two: Rules for Contested Cases, Accy410-429]. **The Rules of the State Office of Hearing**

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Examiners, HE 201-222, filed December 10, 1975; amended and filed March 15, 1976.

Accy141 Failure to comply with Chapter Fifteen: [Rules] Code Of Professional Conduct, Accy 150-159, shall be deemed unprofessional conduct and may be grounds for revocation or suspension of a certificate **and license**.

Accy 142-149 remain unchanged.

Chapter Fifteen: [Rules] Code of Professional Conduct

Accy150 In the practice of accounting and in rendering professional accounting services, a CPA [CPA's] shall adhere to the ["Rules Of Conduct",] [of the "Restatement of the Code of Professional Ethics" adopted by the Council of the American Institute Of Certified Public Accountants on May 3, 1972] **following code**.

Definitions.

The following definitions of terminology are applicable wherever such terminology is used in the rules and interpretations.

Board. The Minnesota State Board of Accountancy.

Certified Public Accountant for licensee. A person holding such certificate or license issued under the Accountancy Law of Minnesota.

Client. The person(s) or entity which retains a certified public accountant or his firm, engaged in the practice of public accounting, for the performance of professional services.

Enterprise. Any person(s) or entity, whether organized for profit or not, for which a CPA provides services.

Firm. A partnership or professional corporation or association engaged in the practice of public accounting, including individual partners or shareholders thereof.

Financial statements. Statements and footnotes related thereto that purport to show financial position which relates to a point in time or changes in financial position which relate to a period of time, and statements which use a cash or other incomplete basis of accounting. Balance sheets, statements of income, statements of retained earnings, statements of changes in financial position and statements of changes in owners' equity are financial statements.

Incidental financial data included in management advisory services reports to support recommendations to a client, and tax returns and supporting schedules do not, for this purpose, constitute financial statements; and the statement, affidavit or signature of preparers required on tax returns neither constitutes an opinion on financial statements nor requires a disclaimer of such opinion.

Institute. The American Institute of Certified Public Accountants.

Interpretations of rules of professional conduct. Pronouncements issued by the Division of Professional Ethics to provide guidelines as to the scope and application of the Code of Professional Conduct.

Practice of public accounting. Holding out to be a CPA and at the same time performing for a client one or more types of services rendered by public accountants.

Professional services. One or more types of services performed in the practice of public accounting.

Applicability of rules.

These rules are adopted under the authority granted by Minn. Stat. § 326.18 (1974) which delegates to the board the power and duty to make rules of professional conduct.

The reliance of the public and the business community on sound financial reporting and advice on business affairs imposes on the accounting profession an obligation to maintain high standards of technical competence, morality and integrity. To this end, a certified public accountant shall at all times maintain independence of thought and action, hold the affairs of his clients in strict confidence, strive continuously to improve his professional skills, observe generally accepted auditing standards, promote sound and informative financial reporting, uphold the dignity and honor of the accounting profession, and maintain high standards of personal conduct.

Acceptance of licensure as a CPA implies that the licensee has assumed an obligation to be diligent in the performance of professional service, and fair and honest in relations with clients, fellow practitioners and the public, and has a proper appreciation of his duties to the community and state. In recognition thereof the board has promulgated the following rules of professional conduct, which each licensee agrees to regard as binding upon him.

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface**. Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules, while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

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These rules do not comprise all acts that may be considered incompatible with the obligations and responsibilities imposed by professional status or discreditable or harmful even though not specifically mentioned or described in the rules. Any licensee may be censured, suspended or expelled for cause by the board, after due opportunity of a hearing upon charges preferred against him, whether or not the alleged misconduct is specifically enumerated or described in the following rules.

The Rules of Professional Conduct which follow apply to all services performed in the practice of public accounting including tax and management advisory services except (a) where the wording of the rule indicates otherwise and (b) that a licensee who is practicing outside the United States will not be subject to discipline for departing from any of the rules stated herein so long as his conduct is in accord with the rules of the organized accounting profession in the country in which he is practicing. However, where a licensee's name is associated with financial statements in such a manner as to imply that he is acting as an independent public accountant and under circumstances that would entitle the reader to assume that United States practices were followed, he must comply with the requirements of Rules 202 and 203.

A licensee may be held responsible for compliance with the Rules of Professional Conduct by all persons associated with him in the practice of public accounting who are either under his supervision or are his partners or shareholders in the practice.

A licensee engaged in the practice of public accounting must observe all the Rules of Professional Conduct. A licensee not engaged in the practice of public accounting must observe only Rules 102, 403 and 409 since all other Rules of Professional Conduct relate solely to the practice of public accounting.

A licensee shall not permit others to carry out on his behalf, either with or without compensation, acts which, if carried out by the licensee, would place him in violation of the Rules of Professional Conduct.

Independence, integrity and objectivity.

Rule 101 Independence. A licensee or a firm of which he is a partner or shareholder shall not express an opinion on financial statements of an enterprise unless he and his firm are independent with respect to such enterprise. Independence will be considered to be impaired if, for example:

A. During the period of his professional engagement, or at the time of expressing his opinion, he or his firm

1. Had or was committed to acquire any direct or material indirect financial interest in the enterprise; or

2. Had any joint closely held business investment with the enterprise or any officer, director or principal stockholder thereof which was material in relation to his or his firm's net worth; or

3. Had any loan to or from the enterprise or any officer, director or principal stockholder thereof. This latter proscription does not apply to the following loans from a financial institution when made under normal lending procedures, terms and requirements:

a. Loans obtained by a licensee or his firm which are not material in relation to the net worth of such borrower.

b. Home mortgages.

c. Other secured loans, except loans guaranteed by a licensee's firm which are otherwise unsecured.

B. During the period covered by the financial statements, during the period of the professional engagement or at the time of expressing an opinion, he or his firm:

1. Was connected with the enterprise as a promoter, underwriter or voting trustee, a director or officer or in any capacity equivalent to that of a member of management or an employee; or

2. Was a trustee of any trust or executor or administrator of any estate if such trust or estate had a direct or material indirect financial interest in the enterprise; or was a trustee for any pension or profit-sharing trust of the enterprise.

The above examples are not intended to be all-inclusive.

Rule 102 Integrity and objectivity. A licensee shall not knowingly misrepresent facts, and when engaged in the practice of public accounting, including the rendering of tax and management advisory services, shall not subordinate his judgment to others.

Rule 103 In tax practice, a licensee may resolve doubt in favor of his client as long as there is reasonable support for his position.

Competence and technical standards.

Rule 201 Competence. A licensee shall not undertake any engagement which he or his firm cannot reasonably expect to complete with professional competence. In determining "incompetence" or "negligence", the board

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may consider, among others, the generally accepted auditing standards and accounting principles promulgated by the Institute and by the Financial Accounting Standards Board.

Rule 202 Auditing standards. A licensee shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an independent public accountant unless he has complied with the applicable generally accepted auditing standards promulgated by the Institute. Statements on Auditing Procedure issued by the Institute's Auditing Standards Executive Committee are, for purposes of this rule, considered to be interpretations of the generally accepted auditing standards, and departures from such statements must (or other standards considered by the board to be applicable in the circumstances) be justified by those who do not follow them.

Rule 203 Accounting principles. A licensee shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such statements contain any departure from accounting principles promulgated by the Institute or the Financial Accounting Standards Board, among others, which has a material effect on the statements taken as a whole, unless the licensee can demonstrate that due to unusual circumstances the financial statements would otherwise have been misleading. In such cases his report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in an otherwise misleading statement.

Rule 204 Forecasts. A licensee shall not permit his name to be used in conjunction with any forecasts of future transactions in a manner which may lead to the belief that the licensee vouches for the achievability of the forecast.

Responsibilities to clients.

Rule 301 Confidential client information. A licensee shall not disclose any confidential information obtained in the course of a professional engagement except with the consent of the client.

This rule shall not be construed (a) to relieve a licensee of his obligation under Rules 202 and 203, (b) to affect in any way his compliance with a validly issued subpoena or summons enforceable by order of a court, (c) to prohibit review of a licensee's professional practices as part

of voluntary quality review under board authorization or (d) to preclude a licensee from responding to any inquiry made by the board, under state statutes.

Members of the board and professional practice reviewers under board authorization shall not disclose any confidential client information which comes to their attention from licensees in disciplinary proceedings or otherwise in carrying out their official responsibilities. However, this prohibition shall not restrict the exchange of information with an aforementioned duly constituted investigative or disciplinary body.

Rule 302 Contingent fees. Professional services shall not be offered or rendered under an arrangement whereby no fee will be charged unless a specified finding or result is attained, or where the fee is otherwise contingent upon the findings or results of such services. However, a licensee's fees may vary depending, for example, on the complexity of the service rendered.

Fees are not regarded as being contingent if fixed by courts or other public authorities or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies.

Rule 303 Reserved for future use.

Rule 304 licensee shall furnish to his client upon request:

- A. a copy of a tax return, or
- B. a copy of a report, or other document, that was previously issued to or for such client, or
- C. any accounting or other records belonging to or obtained for the client's premises or to receive for the client's account, but this shall not preclude him from making copies of such documents when they form the basis for work done by him (or his firm), but in no event shall the accountant have a lien on these accounting or other records;
- D. a copy of an accountant's working papers if such working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client. The information on these working papers must be treated the same as if it were part of the clients books and records.

A licensee shall not withhold any of the above because

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his fee has not been paid, unless the client agreed to pay such fee in advance.

Other responsibilities and practices.

Rule 401 Services to clients of other accountants. A licensee shall not endeavor to provide a person or entity with a professional service which is currently provided by another public accountant except:

A. He may respond to a request for a proposal to render services and may furnish services to those who request them. However, if a client of another independent public accountant requests a licensee to provide such professional service, the licensee must first consult with the other accountant to ascertain that the licensee is aware of all the available relevant facts.

B. Where a licensee is required to express an opinion on combined or consolidated financial statements which include a subsidiary, branch or other component audited by another independent public accountant, he may insist on auditing any such component which in his judgment is necessary to warrant the expression of his opinion.

A licensee who receives an engagement for services by referral from another public accountant shall not accept the client's request to extend his service beyond the specific engagement without first notifying the referring accountant, nor shall he seek to obtain any additional engagement from the client.

Rule 402 Offers of employment. A licensee in public practice shall not make a direct or indirect offer of employment to an employee of another public accountant on his own behalf or that of his client without first informing such accountant. This rule shall not apply if the employee of his own initiative or in response to a public advertisement applies for employment.

Rule 403 Acts discreditable. A licensee shall not commit an act discreditable to the profession.

Rule 404 Solicitation and advertising. A licensee shall not seek to obtain clients by solicitation. Advertising is a form of solicitation and is prohibited.

Rule 405 Commissions. A licensee shall not pay a commission to obtain a client, nor shall he accept a commission for a referral to a client of products or services of others. This rule shall not prohibit payments for the purchase of an accounting practice or retirement payments to individuals formerly engaged in the practice of public accounting or payments to their heirs or estates.

Rules 406 Incompatible occupations. A licensee who is engaged in the practice of public accounting shall not

concurrently engage in any business or occupation which impairs his objectivity in rendering professional services or serves as a feeder to his practice.

Rule 407 Form of practice and name. A licensee may practice public accounting, whether as an owner or employee, only in the form of a proprietorship, a partnership or a professional corporation, organized in accordance with the applicable provisions of the Minnesota Accountancy Law and the Minnesota Professional Corporations Act.

A licensee shall not practice under a firm name which includes any fictitious name, indicates specialization or is misleading as to the type of organization (proprietorship, partnership or corporation). However, names of one or more past partners or shareholders may be included in the firm name of a successor partnership or corporation. Also, a partner surviving the death or withdrawal of all other partners may continue to practice under the partnership name for up to two years after becoming a sole practitioner.

Rule 408 Reserved for future use.

Rule 409 Communications. A licensee shall respond to communications from the board within thirty days of the mailing of such communications, unless an earlier response is requested within the communications.

Accy151 The act of filing an application for examination, certification, or licensure [registration] shall be deemed to and shall constitute an agreement upon the part of the applicant to observe the [Rules of Conduct] Code of Professional Conduct.

Accy152-159 remain unchanged.

Chapter Sixteen: Continuing Education

Accy160-169 remain unchanged.

Chapter Seventeen:

Accy170-179 remain unchanged.

Chapter Eighteen:

Accy180-189 remain unchanged.

Chapter Nineteen:

Accy190-199 remain unchanged.

Chapter Twenty: [Certified Public Accountants;] Professional Corporations [Title].

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[Accy200-209 Reserved for future use.]

Accy 200 A corporation shall not include the words "Certified Public Accountant," or the initials CPA in its corporate name.

Accy 201 An application for license must be made on the form provided by the board and must be accompanied by a copy of the articles of incorporation and first annual report.

Accy202 First annual report. The first annual report must be accompanied by a fee of \$100.00 payable to the Treasurer, State of Minnesota and shall include the following:

A. The name and address of each shareholder and each officer and director;

B. A statement under oath whether or not all shareholders, directors, officers, employees, and agents rendering professional service in this state on behalf of the corporation are licensed by this state or otherwise authorized to render such professional service;

C. Proposed by-laws; and

D. Proposed agreement for buy and sell arrangements among the shareholders except if the corporation has only one shareholder (see Accy205 for admittance of a second shareholder).

Accy203 Each November the board will notify each current corporate licensee of the requirement of the annual report for the succeeding calendar year. However, it is the responsibility of each corporate licensee to file the annual report, apply for annual license renewal and pay the fee of \$25.00.

Accy204 Failure to apply for license renewal, file an annual report and pay the annual license fee shall be deemed unprofessional conduct and may be cause for suspension or revocation of the certificate and license of the corporation and its officers, directors and stockholders licensed to practice in this state.

Accy205 Before admittance of a second or additional stockholder to a corporation, the proposed written agreement binding stockholders to purchase any share offered for sale by a qualified stockholder must be submitted for the board's approval (see Accy202D.).

Accy206-209 Reserved for future use.

Chapter Twenty One: [Corporations, Definitions], **Contested Cases**

Accy210 All contested cases before the board shall be conducted in accordance with the Rules of the State Officer of Hearing Examiners, HE 201-222, filed December 10, 1975; amended and filed March 15, 1976.

Accy[210] 211-219 Reserved for future use.

[Chapter Twenty Two: Formation of Corporation

Accy 220-229 Reserved for future use.

Chapter Twenty Three: Purpose For Which Incorporated

Accy 230-239 Reserved for future use.

Chapter Twenty Four: Applicability of Corporation Acts.

Accy 240-249 Reserved for future use.

Chapter Twenty Five: Corporate Name

Accy250 A corporation shall not include the words "Certified Public Accountants" nor the initials C. P. A. in its corporate name.

Accy251-259 Reserved for future use.

Chapter Twenty Six: Corporation, Certificate of Registration.

Accy260 An application for registration must be made on the form provided by the board and it must accompanied by the following:

(a) The proposed articles of incorporation;

(b) The proposed by-laws; and

(c) Proposed agreements for buy and sell arrangements among the shareholders, except if the corporation has only one shareholder. (See Accy370 for admittance of a second shareholder.)

Accy261-269 Reserved for future use.

Chapter Twenty Seven: Corporations, Annual Renewal (Revised)

Accy270 Each November, the board will notify each current registrant of the registration requirements for the suc-

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ceeding calendar year. However, it is the responsibility of each registrant to apply for the annual registration and pay the appropriate fee.

Accy271 Willful failure to register and pay the annual registration fee shall be deemed unprofessional conduct and may be cause for suspension or revocation of the certificates of officers, directors and stockholders licensed to practice in this state.

Accy272-279 Reserved for future use.

Chapter Twenty Eight: Corporations, Posting

Accy280-289 Reserved for future use.

Chapter Twenty Nine: Corporations, Change of Location

Accy 290-299 Reserved for future use.

Chapter Thirty: Corporations, Transfer and Assignment of Certificate

Accy300-309 Reserved for future use.

Chapter Thirty One: Corporations, Suspensions or Revocation of Certificate

Accy310-319 Reserved for future use.

Chapter Thirty Two: Corporations, Notice of Suspension or Revocation

Accy320-329 Reserved for future use.

Chapter Thirty Three: Corporations, Appeals

Accy330-339 Reserved for future use.

Chapter Thirty Four: Corporations, How Services Rendered

Accy 340-349 Reserved for future use.

Chapter Thirty Five: Corporations, Relationship to Person Served

Accy 350-359 Reserved for future use.

Chapter Thirty Six: Corporations, Employees

Accy 360-369 Reserved for future use.

Chapter Thirty Seven: Corporations, Shares and Membership, Issuance

Accy370 Before admittance of a second additional stockholder to a corporation, the proposed written agree-

ment binding stockholders to purchase any shares offered for sale by a qualified stockholder must be submitted for the board's approval. (See Accy 260 (e).)

Accy371-379 Reserved for future use.

Chapter Thirty Eight: Corporations, Death or Disqualification of Shareholder

Accy380-389 Reserved for future use.

Chapter Thirty Nine: Corporations, Examination by Board

Accy390-399 Reserved for future use.

Chapter Forty: Corporations, Regulations

Accy400 All regulations of the board shall be adopted in the manner prescribed by AttyGen301-306, Rule Making Procedure For Non-Contested Cases, promulgated April, 1969.

Accy401-409 Reserved for future use.

Chapter Forty One and Forty Two: Rules for Contested Cases

Accy410 Intent. No person before this board in a contested case shall have his rights, privileges or duties determined without regard for fundamental fairness. The intent of these provisions is to provide a simple, non-technical method of assuring all parties a fair hearing. To this end, appropriate sanctions may be imposed for failure of any party to comply with the substance of these regulations.

Accy411 Initiating a contested case.

(a) Initiation by application. Any person authorized by law to have his rights, privileges or duties determined after a board hearing may initiate a contested case by making application. An application shall contain:

(1) The name and address of the applicant;

(2) A statement of the nature of the determination requested and the reasons therefor;

(3) The names and addresses of all persons known to the applicant who will be directly affected by such determination; and

(4) The signature of the applicant or his attorney.

(b) Initiation by complaint. Any person authorized by law to submit to the board a complaint that his rights are being abridged, that his privileges are being denied, or that duties owed him are being defaulted upon may initiate a

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contested case by filing a complaint. A complaint shall contain:

- (1) The name and address of the complainant;
- (2) The name or names of those against whom the complaint is made;
- (3) The relief sought and the grounds therefor; and
- (4) The signature of the complainant or his attorney.

(c) Initiation by board order. Where authorized by law, the board may order a contested case commenced to determine the rights, duties and privileges of specific parties.

Accy412 Conciliation. After receipt of a complaint or application or adoption by the board of an order initiating a contested case, the board or an agent thereof may attempt to resolve the dispute by conciliation both before and after the contested case commences.

Accy413 Commencement of contested case. Within ninety days following receipt of a complaint or application or the adoption by the board of an order initiating a contested case, the board shall appoint a hearing examiner and commence the contested case by serving notice stating:

- (a) The basis for commencing the contested case. A copy of the document which initiated the contested case shall be attached to said notice.
- (b) The rights of the parties to counsel and to a formal hearing.
- (c) The name of the hearing examiner.
- (d) The time and place of a pre-hearing conference.
- (e) That appropriate sanctions may be imposed for failure to comply with the substance of these regulations. A copy of these rules shall be attached to said notice.

Accy414 Hearing examiner.

(a) Qualifications. The hearing examiner shall be an attorney at law unless an attorney at law is not obtainable or unless some other individual is agreed upon by all parties. At the time of appointment the hearing examiner shall not be an employee of nor on retainer to the board. After appointment, the hearing officer shall be considered an employee of the board for the sole purposes of compensa-

tion, if any, and authorization to undertake the duties imposed upon him by these rules. In all other respects he shall be independent of the board.

(b) Authority. The hearing examiner shall have the authority to conduct all hearings and take all action necessarily incidental thereto, including but not limited to, issuing subpoenas for production of evidence and witnesses, administering oaths, taking testimony, ordering the production of tangible evidence, hearing and ruling on motions, making such preliminary, interlocutory, and other orders as are appropriate, conducting the hearing, and rendering findings and recommended order.

(c) Imposing sanctions. The hearing examiner may impose appropriate sanctions on any party failing to comply with the substance of these rules.

(d) Impartiality. The hearing officer shall take no part in any preliminary investigation or inquiry into the facts or issues involved in the contested case except as provided in Accy420. He shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, including the board, its employees or agents, nor, in connection with any issue of law, with any party, including the board, its employees or agents, or his representative, except upon notice and opportunity for all parties to participate.

(e) Disqualification. A hearing examiner shall withdraw from participation in a contested case at any time prior to the final determination if he deems himself disqualified for any reason. Upon the filing in good faith of a timely and sufficient Petition Of Prejudice, the hearing examiner shall determine the matter as a part of the record and decision in the case.

Accy415 Answer. Within twenty days after service of the Notice of Commencement Of A Contested Case, excluding the day of service, an adverse party may interpose an answer to the initiating complaint, application or order. A copy of such answer shall be served on all parties to the contested case. The original, together with an affidavit of service, shall be filed with the board within five days after service is complete.

Accy416 Right to counsel. Any party may be represented by legal counsel throughout the proceedings in a contested case before this board.

Accy417 Intervention. Upon timely application any person shall be permitted to intervene in a contested case upon

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showing that his legal rights, duties or privileges may be determined or affected in the contested case, unless the hearing officer shall find that such person's interest is adequately represented by one or more parties participating in the case.

Accy418 Consolidation.

(a) Basis for consolidation. Whenever the hearing examiner, either on his own motion or upon petition by any party or by the board if it is not a party, determines:

(1) That separate cases present substantially the same issues of fact and law;

(2) That a holding in one case would affect the rights of parties in another case; and

(3) That consolidation would not substantially prejudice any party, he may order such cases consolidated for a single hearing on the merits. The order for consolidation shall be served on all parties.

(b) Severance. Any party may object to consolidation by filing with the hearing examiner prior to final determination a petition for severance. Such petition shall contain petitioner's name, address, the designation of his case prior to consolidation and the reasons for his petition. Argument may be heard and evidence received at such time as the hearing examiner deems proper. If the hearing examiner finds that consolidation would prejudice petitioner, he may order severance or such other relief as he deems necessary.

Accy419 Informal disposition. Informal disposition may be made of any contested case or any issue therein by stipulation, settlement, or consent order at any point in the proceedings.

Accy420 Pre-hearing conference.

(a) A pre-hearing conference shall be held prior to a contested case hearing. The purpose of the conference is:

(1) To provide open discussion of all issues of procedure, fact and law at an informal conference conducted fairly and expeditiously by the hearing examiner;

(2) To reach settlement on those issues of procedure, fact and law not in dispute;

(3) To provide an opportunity for a full and fair disclosure of the evidence to be relied upon by each party;

(4) To define the issues for hearing and outline the scope of the hearing.

(c) The parties shall submit to the examiner all documen-

tary evidence and other materials relied upon to support their position and such evidence shall be made available to the other parties.

(d) The parties shall submit the names and addresses of witnesses who will testify on their behalf at the hearing and a summary of their expected testimony. All this shall be available to the other parties.

(e) Within ten (10) days after the close of the pre-hearing conference, the examiner shall issue an order which shall become part of the record and shall state:

(1) The issues of fact and law resolved;

(2) The contested issues of fact and law remaining;

(3) List of exhibits and witnesses of each party;

(4) A notice of hearing pursuant to Accy421 if such a notice has not been served heretofore.

Accy421 Notice of hearing. Not less than thirty days prior to the hearing date, the hearing examiner or the board shall serve a notice of hearing on all parties to the case. Such notice shall contain:

(a) The time and place of the hearing.

(b) The purpose and procedure for the hearing.

(c) The issues to be determined.

(d) The name of the hearing examiner who will preside.

Accy422 The hearing.

(a) Right to hearing. All parties shall have the right to a hearing before the board, at which hearing the parties may present evidence, offer rebuttal testimony, make oral argument and submit written briefs with respect to the issues.

(b) Witnesses. Any party may be a witness or may present witnesses on his behalf at a hearing. All testimony at a hearing shall be under oath or affirmation. Every party shall have the right of cross-examination of witnesses who testify. A party may call an adverse party and interrogate him by leading questions and contradict and impeach him on material matters.

(c) Rules of evidence.

(1) General rule. The introduction of evidence shall not be subject to the technical rules of evidence. The hearing examiner may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. Evi-

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dence which is incompetent, irrelevant, immaterial or repetitious may be excluded.

(2) Privileges. The hearing examiner shall give effect to the rules of privilege recognized by law.

(3) Documentary evidence. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the hearing examiner or upon agreement of the parties.

(4) Surprise. No witness whose name was not disclosed at the pre-hearing conference shall be allowed to testify nor shall any document or exhibit not disclosed at the pre-hearing conference be admitted into evidence, except upon prior written application to and approval by the hearing examiner. In no event shall testimony, documents, or exhibits be admitted which would unduly surprise and prejudice the opposing party's case.

(5) Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents, except tax returns and tax reports, in the possession of the board, shall be offered and made a part of the record in the case.

(6) Notice of facts. The hearing examiner may take notice of judicially cognizable facts and, in addition, may notice technical facts within his specialized knowledge. Where final determination rests on official notice of material facts not appearing in the evidence in the record, a party is entitled, upon timely request, to an opportunity to rebut such facts.

(7) Burden of proof. The party initiating the contested case must prove the facts at issue by a preponderance of evidence.

(d) Hearing procedure. Subject to the provisions of Accy422 (a), (b), and (c), the hearing shall be conducted in the following manner:

(1) After opening the hearing, the hearing officer shall set forth the procedural content of Accy422 (a), (b), and (c).

(2) A representative of the board shall introduce the Notice of Commencement Of A Contested Case; Notice Of Initiation Of Proceedings, supporting documents, if any, and affidavits of service; Notice Of Hearing, supporting documents, if any, and affidavits of service; and any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing.

(3) The party who initiated the contested case may make an opening statement. All other parties may make such statements in a sequence determined by the hearing officer.

(4) After any opening statements the party who initiated the contested case shall begin the presentation of evidence. He shall be followed by the other parties in a sequence determined by the hearing officer.

(5) Cross-examination of witnesses shall be conducted in a sequence determined by the hearing officer.

(6) When all parties and witnesses have been heard, opportunity shall be offered to present rebuttal evidence and final argument or both.

(7) After final argument, the hearing shall be closed or continued at the discretion of the hearing officer. If continued, it shall be either continued to a certain time and day, announced at the time of the hearing and made part of the record, or continued to a date to be determined later which must be upon not less than five days written notice to the parties.

(e) Decorum.

(1) The hearing officer may prohibit the operation of a television, newsreel, motion picture, still or other camera, or of lights or other devices used in connection with the camera in the hearing room while the hearing is in progress, if such operation would, in his opinion, interfere with or disrupt the hearing. The hearing officer may also prohibit the operation of mechanical recording devices in the hearing room while the hearing is in progress, if such operation would, in his opinion, interfere with or disrupt the hearing.

(2) Other conduct. Pursuant to and in accordance with the provisions of Minn. Stat. § 624.72 (1969) no person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference or disruption or threat thereof, the hearing officer shall read this rule to those persons causing such interference or disruption and thereafter proceed as he deems appropriate.

(f) Transcript. A verbatim record of the hearing shall be taken by recording equipment or by court reporter. A court reporter shall be used if requested by any party. The requesting party shall bear the expense of providing the court reporter. The verbatim record will not be transcribed unless a party requests transcription. The board may require the requesting party to pay the reasonable cost of preparing the transcript.

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Accy423 The record.

(a) Contents. The hearing examiner shall prepare an official record in each hearing which shall contain the following:

(1) All pleadings, including but not limited to documents of initiation, answers, motions, petitions, briefs, memoranda, decisions and orders;

(2) All evidence received or considered;

(3) A statement of matters officially noticed;

(4) All memoranda or other data other than advice of legal counsel submitted to the hearing examiner by the board in connection with the case.

(b) Findings limited to. No factual information or evidence, except tax returns and tax reports, which is not a part of the record shall be considered by the hearing examiner or by the board in making a recommendation for disposition or a decision in a contested case. However, the hearing examiner and the board may use their experience, technical competence and specialized knowledge in the evaluation of the evidence.

Accy424 Report of hearing examiner.

(a) The hearing examiner shall serve on all parties a written report of his findings of fact and law and a recommendation for disposition of the case.

(b) Exceptions.

(1) Any party may file with the board and serve upon all parties written exceptions to the hearing examiner's report and recommendation for disposition, remand the case to the hearing examiner for further hearing, adopt the hearing examiner's report. Any party may file with the board and serve upon all parties responses to any exceptions within fifteen (15) days after service of exceptions.

(2) If no exceptions are filed within the time provided, the hearing examiner's report, at the option of the board, shall become a final decision of the board.

Accy425 Decision of the board.

(a) The board may accept the hearing examiner's report and recommendations for disposition, remand the case to the hearing examiner for further hearing, adopt the examiner's report with any changes warranted by the record, or issue its own report of findings and decision.

(b) Reasons required. Every decision or order of the board in a contested case shall be in writing or stated in the record and shall be accompanied by a statement of the rea-

sons therefor. The statement of reasons shall include a concise statement of the conclusions upon each contested issue of fact necessary to the decision.

(c) Service. Every decision or order of the board and the statement of reasons therefor shall be served on all parties to the case.

Accy 426 Rehearing.

(a) Board right to rehear. The board may, upon request or its own motion and for good cause shown, reopen, rehear and redetermine a contested case after a final decision adverse to a party to the contested case other than the board has been rendered. This right may be exercised until it is lost by appeal or the granting of a writ of certiorari or until a reasonable time has run, but in no event shall the time exceed the time allowed by statute for appeal or six months, whichever is shorter.

(b) Party's request for rehearing. At any time prior to the board's loss of the right to rehear a contested case, any party to that case may request a rehearing by filing a petition for rehearing. Such petition shall contain:

(1) The name and address of the petitioner;

(2) The board designation for the case;

(3) The reasons for the petition.

(c) Board motion to rehear. The board may, on its own motion, for good cause stated in the record, reopen, rehear and redetermine a contested case if the decision in that case was adverse to a party to that case other than the board.

(d) Determination. The board shall grant or deny a petition for rehearing as a part of the record in the case. Such petition shall be granted if there appears on the face of the petition and the record irregularities in the proceedings, errors of law occurring during the proceedings, newly discovered material evidence, a lack of substantial evidence to support the decision or good cause for failure to appear or plead. Evidence and argument may be presented at the discretion of the board in written or oral form or both by and party to the contested case with respect to the petition.

(e) Rehearing. The rehearing shall be conducted in the same manner prescribed by these rules for a hearing.

Accy427 Appeal by board. The board may appeal pursuant to Minn. Stat. § 15.0424 any adverse decision. The board shall be deemed a "person" for such purposes.

Accy428 Emergency procedures. Nothing contained in these rules is intended to pre-empt, repeal or be in conflict with any rule, regulation or statute which provides for acts

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by the board in an emergency or procedure for conduct by the board in such a situation.

Accy429 Reserved for future use.]

Department of Administration Energy Conservation Standards for Buildings

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held at the Holiday Inn, 161 St. Anthony Avenue, St. Paul, Minnesota, on March 31, 1977 commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Peter Erickson, State Hearing Examiners Office, Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104, 612/296-8118, either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, would supersede the existing requirements (SBC 6001 through SBC 6013) and would have the effect of making Minnesota requirements the same as other states adopting such national consensus standards. Copies of the proposed amendments to SBC 6001 through 6013 are available free of charge from the Building Code Division, 408 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota, 55101. Copies of ASHRAE 90-75 are available for review at that same address. ASHRAE 90-75 may be purchased from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 345 East 47th Street, New York, New York, 10017, for \$10.00 per copy, plus fifty cents postage per copy. ASHRAE 90-75 and the amendments proposed to it will also be available for review at the door on the date of the hearing. The agency's authority to promulgate the proposed rules is contained in Minn. Stat. § 16.86 (1974). A "statement of need" explaining why the agency feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

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Please be advised that pursuant to Minn. Stat. § 10A.01, subd. 11 (1974) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

Richard L. Brubacher
Commissioner

Rules as Proposed

(Proposed SBC 6001-6013, if adopted, will repeal and supersede former SBC 6001-6013)

SBC 6001 Authorization. These Rules are authorized by Minn. Stat. § 116H.12, subd. 4 (1974) and Minn. Stat. § 116H.121 (1976) and established through the rulemaking procedures set forth in Minn. Stat. §§ 15.0411 to 15.052 (Supp. 1975) in order to carry out the provisions of §§ 116H.12 (subd. 4) and 116H.121, regarding energy conservation standards for design, evaluation and construction of all new buildings and the remodeling or reconstruction undertaken after the effective date of these Rules. Additionally these Rules are intended as the energy conservation standards for the survey of certain public buildings, defined by Statute as "buildings owned by the State and the University of Minnesota." These Rules constitute amendments to the State Building Code. In the event that these Rules differ with the State Building Code, these Rules shall govern in all cases not affecting safety and health requirements. Additionally these Rules and the Standard are intended to be used in the required survey of buildings owned by cities, counties and school districts. Compliance with these Rules and the referenced standards shall not be mandatory for existing buildings owned by any city, county or school district.

SBC 6002 Enforcement.

A. Building Officials, in the municipality for which they are appointed, shall enforce these Rules.

B. In all other areas of the State these Rules shall be enforced by the Commissioner of Administration or his designated representatives. The fees for such enforcement shall be based on the schedule established in Chapter 3 of the Uniform Building Code, as adopted by SBC 201.

PROPOSED RULES

SBC 6003 Purpose. The purpose of these Rules is to provide design requirements which will improve utilization of energy in new buildings, additions, remodeled elements of buildings and certain existing public buildings.

A. The requirements of these Rules are directed toward the design or modification of building envelopes to provide adequate thermal resistance and low air leakage and toward the design or redesign and selection of mechanical, electrical service, and illumination systems and equipment which will enable the effective use of energy in buildings.

B. It is intended that these Rules be flexible in order that designers be encouraged to use innovative approaches and techniques to achieve effective conservation of energy. More effective use of energy may be achieved by the use of alternate design solutions, which follow the specific requirements of Sections 10 and/or 11 of the Standard referenced in SBC 6005.

C. It is intended that these Rules, and the referenced standard, be used in the design of new buildings, additions, for remodeled elements of existing buildings as well as being applicable to certain existing public buildings as defined in SBC 6001. Compliance with the requirements should be determinable and be economically justifiable in the preconstruction stage by evaluation and analysis of design specifications, drawings and calculations.

D. These Rules are not intended to abridge any safety or health requirements.

SBC 6004 Scope.

A. These Rules and the referenced Standard set forth requirements for the design of new buildings as enumerated below, covering their exterior envelopes and selection of their HVAC, service water heating, electrical distribution and illuminating systems, and equipment, for effective use of energy.

1. These Rules and the referenced Standard apply to new buildings, additions, remodeled elements as well as certain existing public buildings.

2. Buildings or portions thereof whose peak design rate of energy usage is less than 1 w/ft^2 (3.4 Btu/h ft^2) (10.8 w/m^2) of floor area for all purposes are excluded from the scope of this Standard.

3. Certain other buildings or elements thereof may be exempt when design data are not available or not applicable. In these cases, the exemptions are specifically noted in the sections of the referenced Standard.

B. These Rules and the referenced Standard do not cover specific procedures for the operation, maintenance and use of buildings.

SBC 6005 Adoption of ASHRAE Standard 90-75 by reference. Sections 3.0 through 11, attachments and appendices of the 1975 Edition of ASHRAE Standard 90-75, hereinafter referred to as Standard 90, as promulgated and published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., is incorporated by reference and hereby made part of the State Building Code and shall be subject to the following alterations and amendments.

Section 3 of Standard 90 is amended to read as follows:

A. Page 9, Definitions.

Heated space. Space, within a building, which is provided with a positive heat supply to maintain air temperature of 50F (10°C) or higher. **This definition is not to be construed to require the insulation of floor assemblies above basements or crawl spaces in Type A buildings provided with a positive heat supply.**

B. Page 10, Definitions. [manufactured building. Any building which is of closed construction and which is made or assembled in manufacturing facilities on or off the building site, or any building of open construction which is made away from the building site for installation or assembly and installation on the building site.

mobile home. A factory assembled, movable dwelling designed and constructed to be towed on its own chassis, comprised of frame and wheels, usually used without a permanent foundation, and distinguishable from other types of dwellings in that the standards to which it is built include provisions for its mobility on that chassis as a vehicle.]

C. Page 12, Exterior envelope requirements.

4.2.7. The design of buildings for energy conservation shall not create conditions of accelerated deterioration from moisture condensation. **Vapor barriers are required to maintain the thermal performance of required building insulation against cold weather water vapor condensation (Perm rating 1.0 maximum).**

D. Page 18. 4.3.2.4 Slab-on-Grade Floors. For slab-on-grade floors, the thermal resistance of the insulation around the perimeter of the floor shall be as shown in Fig. 2. The insulation shall extend downward from the top of the slab [for a minimum distance of 24 in. (0.6 m)] **to the design frost line** or downward to the bottom of the slab then horizontally beneath the slab for [a minimum total distance of 24 in. (0.6 m)] **an equivalent distance.**

PROPOSED RULES

E. Page 18. 4.4.2.4 Slab-on-Grade Floors. For slab-on-grade floors, the thermal resistance of insulation around the perimeter of the floor shall be as shown in Fig. 2. The insulation shall extend downward from the top of the slab [for a minimum distance of 24 in. (0.6 m)] **to the design frost line** or downward to the bottom of the slab then horizontally beneath the slab for [a minimum total distance of 24 in. (0.6 m)] **an equivalent distance**.

F. Page 20. 5.2 Scope. This section covers determination of heating and cooling loads, design requirements, and control requirements for general comfort applications in new buildings [where normally clothed people are engaged in sedentary or near sedentary activities.] Criteria are established for insulating HVAC systems and for duct construction. Exceptions. Special applications, such as but not limited to hospitals, laboratories, thermally sensitive equipment, computer rooms and [supermarkets] **areas with open refrigerated display cases**, are exempt from the requirements of this section. Where these special applications are described in the 1974 ASHRAE Handbook and Product Directory, Applications Volume¹, the criteria described therein should be used.

G. Page 22, References, add Footnote 17.

17. "Monthly normals of temperature, precipitation and heating degree days 1941-70", U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Environmental Data Service, National Climatic Center, Asheville, North Carolina, August, 1973.

H. Page 25, Exceptions.

d. The use of outdoor air cooling may affect the operation of other systems (such as return or exhaust air fans or [supermarket refrigeration] **areas with open refrigerated display cases**) so as to increase the overall energy consumption of the building.

I. Page 32. 7.3.1.1 is deleted in its entirety.

J. Page 33. 7.3.1.2 is deleted in its entirety.

K. Page 33. 7.3.2 Combination Service Water Heating/Space Heating Boilers. Service water heating equipment shall not be dependent on year-round operation of space heating boilers; that is, boilers that have as another function winter space heating. [Excepted from this provision until January 1, 1977 are systems with service/space heating boilers having a stand by loss in Btu/h(W) less than

$$\frac{25 \text{ pmd} + 250}{n} \qquad \frac{(7 \times 10^6 \text{ pmd} + 73)}{n}$$

where pmd is the probable maximum demand in gallons per hour (m³/s) (determined as per Chapter 37 of the 1973 ASHRAE Handbook and Product Directory, Systems Volume) and n is the fraction of the year when the outdoor daily mean temperature is more than 64.9F (18°C). EXCEPTION. After January 1, 1977 excepted from this provision are systems with service/space heating boilers having a stand by loss Btu/h(W) less than

$$\frac{13.3 \text{ pmd} + 400}{n} \qquad \frac{(3.7 \times 10^6 \text{ pmd} + 117)}{n}$$

The stand by loss is to be determined for a test period of 24 hour duration while maintaining a boiler water temperature of 90F (32°C) above ambient.]

SBC 6006 Required procedure for exemption.

A. Any person seeking exemption from the requirements of these Rules and the referenced Standard shall submit a request, supported by evaluation and documentation, to the Building Official of the municipality where the building permit is required.

B. In those areas of the State where the State Building Code does not apply, such request for exemption shall be submitted to the State Building Inspector, supported by same documentation as required by SBC 6006A.

SBC 6007 through SBC 6013 reserved for future use.

KEY: New rules and material proposed to be added to an existing rule are printed in **boldface**. Material proposed to be deleted from an existing rule is printed in [single brackets]. Underlining indicates additions to proposed rules; while [[double brackets]] indicate matter stricken from proposed rules. Existing material is printed in standard type face.

OFFICIAL NOTICES

Department of Transportation Administration Division

Application of Soo Line Railroad Company to Retire and Remove a Spur Track near the intersection of Lafayette and University Avenue in Saint Paul, Minnesota.

Notice of Hearing

The Department of Transportation has received a petition by the Soo Line Railroad Company (hereinafter called the "Soo Line") to retire and remove a spur track in the City of Saint Paul, Minnesota serving the following industries:

Miller & Holmes, Inc., 501 Lafayette Road,
Saint Paul, Minnesota 55101

and

Land O'Lakes, Incorporated, 415 Grove Street,
Saint Paul, Minnesota 55101

IT IS HEREBY ORDERED, and notice is hereby given that a contested case hearing concerning the above-entitled matter will be held on March 4, 1977, at 10:00 A.M. at the offices of the Chief Hearing Examiner, Room 300, 1745 University Avenue, Saint Paul, Minnesota.

The hearing will be held before Mr. Richard DeLong, 1745 University Avenue, Saint Paul, Minnesota 55104, (Telephone: 612-296-8113) a Hearing Examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented by legal counsel or any other representative of their choice throughout the proceeding. The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. Section 15.0411 through Minn. Stat. Section 15.052 and Minn. Rule HE 201 through 222. Questions concerning the issues raised in this Order or concerning disposition or questions concerning the issues raised in this Order may be directed to John R. Murphy, Assistant Attorney General, 5th Floor, Transportation Building, Saint Paul, Minnesota 55155, (Telephone: 612-296-3213).

The purpose of the hearing is to ensure that under the provisions of Minn. Stat. 219.741 all parties and potential parties of interest are given an opportunity to be heard on the proposed retirement and removal of Soo Line's spur track.

ALL PARTIES ARE ADVISED that if a party intends to appear at the hearing scheduled for March 4, 1977, at 10:00 A.M., the Notice of Appearance form enclosed with this order must be completed and returned to the Hearing Examiner at least 10 days before the hearing date. SHOULD A PARTY FAIL TO APPEAR AT THE HEARING, THE ALLEGATIONS MADE IN THE PETITION MAY BE TAKEN AS TRUE.

The above cited procedural rules are available at the Office of Hearing Examiners or may be purchased from the Documents Section of the Department of Administration, 140 Centennial Building, Saint Paul, Minnesota 55155 (612-296-2874). They provide generally for the procedural rights of the parties including: rights to advance notice of witnesses and evidence, right to a prehearing conference, rights to present evidence and cross-examine witnesses, and right to purchase a record or transcript. Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence.

Persons attending the hearing should bring all evidence bearing on the case including any records or other documents.

If persons have good reason for requesting a delay of the hearing, the request must be made in writing to the Hearing Examiner at least 5 days prior to the hearing. A copy of the request must be served on the agency and any other parties.

Jim Harrington
Commissioner of Transportation

Notice of Appearance

Date of Hearing: March 4, 1977

Name and Telephone Number of Hearing Examiner: Mr. Richard DeLong, 1745 University Avenue, Saint Paul, Minnesota 55104.

TO THE HEARING EXAMINER:

You are advised that the party named below will appear at the above hearing.

Name of Party: _____

Address: _____

Telephone Number: _____

Party's Attorney or Other Representative: _____

Office Address: _____

Telephone Number: _____

Signature of Party or Attorney: _____

Date: _____

OFFICIAL NOTICES

Application of Soo Line Railroad Company to Retire and Remove a Loading Platform at Tenth Avenue North and Second Street North in Minneapolis, Minnesota.

Notice of Hearing

The Department of Transportation has received a petition by the Soo Line Railroad Company (hereinafter called the "Soo Line") to retire and remove its loading platform at 10th Avenue North in the City of Minneapolis, Minnesota.

IT IS HEREBY ORDERED, and notice is hereby given that a contested case hearing concerning the above-entitled matter will be held on March 7, 1977, at 10:00 A.M. at the offices of the Chief Hearing Examiner, Room 300, 1745 University Avenue, Saint Paul, Minnesota.

The hearing will be held before Mr. Richard DeLong, 1745 University Avenue, Saint Paul, Minnesota 55104, (Telephone: 612-296-8113) a Hearing Examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented by legal counsel or any other representative of their choice throughout the proceeding. The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. Section 15.0411 through Minn. Stat. Section 15.052 and Minn. Rule HE 201 through 222. Questions concerning the issues raised in this Order or concerning disposition or questions concerning the issues raised in this Order may be directed to John R. Murphy, Assistant Attorney General, 5th Floor, Transportation Building, Saint Paul, Minnesota 55155, (Telephone: 612-296-3213).

The purpose of the hearing is to ensure that under the provisions of Minn. Stat. Sec. 219.85 all parties and potential parties of interest are given an opportunity to be heard on the proposed retirement and removal of Soo Line's loading platform.

ALL PARTIES ARE ADVISED that if a party intends to appear at the hearing scheduled for March 7, 1977, at 10:00 A.M., the Notice of Appearance form enclosed with this order must be completed and returned to the Hearing Examiner at least 10 days before the hearing date. SHOULD A PARTY FAIL TO APPEAR AT THE HEARING, THE ALLEGATIONS MADE IN THE PETITION MAY BE TAKEN AS TRUE.

The above cited procedural rules are available at the Office of Hearing Examiners or may be purchased from the Documents Section of the Department of Administration, 140 Centennial Building, Saint Paul, Minnesota 55155 (612-296-2874). They provide generally for the procedural

rights of the parties including: rights to advance notice of witnesses and evidence, right to a prehearing conference, rights to present evidence and cross-examine witnesses, and right to purchase a record or transcript. Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence.

Persons attending the hearing should bring all evidence bearing on the case including any records or other documents.

If persons have good reason for requesting a delay of the hearing, the request must be made in writing to the Hearing Examiner at least 5 days prior to the hearing. A copy of the request must be served on the agency and any other parties.

Jim Harrington
Commissioner of Transportation

Notice of Appearance

Date of Hearing: March 7, 1977

Name and Telephone Number of Hearing Examiner: Mr. Richard DeLong, 1745 University Avenue, Saint Paul, Minnesota 55104.

TO THE HEARING EXAMINER:

You are advised that the party named below will appear at the above hearing.

Name of Party: _____
Address: _____
Telephone Number: _____
Party's Attorney or Other Representative: _____

Office Address: _____

Telephone Number: _____
Signature of Party or Attorney: _____
Date: _____

ERRATA

1. I S.R. 713: insert "and" after "inch-miles;" at EA 1053 A.4.
2. I S.R. 713: insert "each of" after "during" and before "the" at EA 1053 C.1.
3. I S.R. 714: insert "and" after "reliability;" at EA 1054 A.6.
4. I S.R. 714: insert "and" after "Agency;" at EA 1055 A.2.i.

OFFICIAL NOTICES

5. I S.R. 716: insert "each of" after "during" and before "the" at EA 1063 C.1.

6. I S.R. 716: insert "and" after "reliability;" at EA 1064 A.6.

7. I S.R. 717: insert "waters" after "surface" and before "and" at EA 1065 C.3.

8. I S.R. 812: insert "DPW 54 Aid to the blind. Repealed" after "DPW 50 County nursing-home standards. Repealed" and before "Financial Assistance to the Aged, Blind and Disabled"

9. I S.R. 971: change "of" to "and" after "notice" and before "hearing" at PSC 2 (o).

10. I S.R. 971: insert "Safety." after "PSC 5" and before "General" at PSC 5.

11. I S.R. 971: delete "A.", "B." and "C." from the second, third, and fourth paragraphs, respectively, at PSC 5.

12. I S.R. 972: change "longer" to "larger" at PSC 106 (c).

13. I S.R. 972: insert "is" after "which" and before "designed" at PSC 122 B.1.

14. I S.R. 972: change "our" to "out" at PSC 122 C.

15. I S.R. 972: change "or" to "of" after "constructed" and before "reinforced" at PSC 122 C.

16. I S.R. 976: change "any" to "and" at PSC 128 B.12.

17. I S.R. 978: insert "zone" after "or" and before "charges" at PSC 180 (a) 3. (bb).

18. I S.R. 978: change "or" to "of" after "explanations" and before "alternate" at PSC 180 A.3.

19. I S.R. 985: change "Fling" to "Filing" at PSC 217.

20. I S.R. 990: change "raasons" to "reasons" at PSC 298 D.

21. I S.R. 991: change "½" to "4" at PSC 303 G.4.

22. I S.R. 991: change "[(4)]" to "[(5)]" at PSC G.5.

23. I S.R. 994: change "billing" to "bill" at PSC 314 B.3.

24. I S.R. 998-1000: delete "C." from paragraphs immediately following each of the following sections: PSC 412 B.9.
PSC 413 B.9.
PSC 414 B.8.
PSC 415 B.9.
PSC 416 B.9.

I S.R. 1180: change "—" to "II" after "Social Service Supervisor" at DPW 126 C.

I S.R. 1180: change "DQP" to "DPW" after "Affirmative Action Plan" at DPW 126 T.2.

I S.R. 1181: delete underlining and boldfacing from "social" after "defining emotional, physical" at DPW 127 D.2.

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House of Representatives
Attn: Edward Burdick, Chief Clerk
Room 211 Capitol
St. Paul, Minnesota 55155

I