



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 03-071

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]

1. Statutory Authority

a. The statement of statutory authority should include s. 442.01 (1), Stats., which requires the examining board to promulgate some of the provisions in this rule.

b. Section Accy 1.002 (title) purports to apply rules of conduct to certified public accountants (CPA) who operate a CPA-related business. However, sub. (1) states that a CPA that has a significant influence over a CPA-related business is considered to be practicing as a CPA and all persons with ownership interest in that business must follow the rules of the examining board. Further, sub. (2) provides that a CPA who operates *any* business must follow the rules of the examining board in the operation of that business. The title to the rule should be clarified. Further, what statutory authority exists for the examining board to apply its rules to a person, other than a CPA, having an ownership interest in a CPA-related business? If the intent of the rule merely is to require that a CPA follow board rules whenever the CPA has significant influence over a CPA-related business or whenever the CPA operates a business, perhaps this could be better accomplished by including these relationships in the definition of the term “client” in s. Accy 1.003.

c. Section 442.08 (3), Stats., requires the examining board to promulgate rules that define “ownership interest” for the purpose of issuing a CPA license to a firm under s. 442.08 (2), Stats., and for determining the percentage of a person’s ownership interest in a firm. The rule does not appear to comply with this statutory requirement.

d. Section Accy 1.003 (11) defines “firm” in a way that changes the definition of “firm” in s. 442.001 (4), Stats., by adding “that is licensed to practice as a certified public accountant.” These additional words should be deleted so that the statutory definition applies.

e. The definition of “practice as a certified public accountant” in s. Accy 1.003 (23) conflicts with s. 442.02, Stats., which clearly lays out the conditions, **any one of which** requires a person to be “considered to be in practice as a certified public accountant.” Section Accy 1.002 (23) should be deleted and the definition in s. 442.02, Stats., should be incorporated into the rule.

f. Section Accy 4.02 appears to conflict with s. 442.08 (2) (c) 2., Stats., in that the rule provision requires a firm to be licensed as a CPA “if any member of the firm practices as a certified public accountant in Wisconsin” without regard to the ownership requirement in s. 442.08 (2) (c) 2., Stats., under which a firm applying for licensure must demonstrate that more than 50% of the ownership interest of the firm is held by individuals who hold certificates or licenses to practice as a CPA.

g. In general, the requirements for licensure for a firm in s. 442.08 (2), Stats., are promulgated by the rule as **renewal** application requirements under s. Accy 4.037. To conform to s. 442.08 (2), Stats., which applies to issuance of the initial license, the rule should promulgate the requirements as **licensure** requirements for firms, not as renewal application requirements.

h. Section Accy 5.11 states that no person may review a candidate file without express permission in writing of the candidate to the board. What statutory authority exists for this blanket exemption to the Open Records Law under ss. 19.31 to 19.39, Stats.?

2. Form, Style and Placement in Administrative Code

a. In the second to last paragraph of the analysis, the notation “Accy” should precede the numerical references to the administrative code.

b. Sections Accy 1.001 (1) and (3) and 1.002 refer to the rules of the examining board. A numerical cross-reference should be used instead. For example, s. Accy 1.001 (1) could read: “Chapters Accy 1 to 9 apply to a person who practices as a certified public accountant in this state.”

c. Section Accy 1.003 (1) defines “Attest service” or “attest engagement” in the same way, whereas s. 442.001 (1), Stats., defines only the term “attest service.” Section Accy 1.302 (3) uses the phrase “period of the attest services engagement” and s. Accy 1.302 (5) uses the term “period of the attest services.” Because definitions are used to achieve consistency and clarity of terminology [see s. 1.01 (7) (a), Manual], it is preferable to define and use only one of the terms if they are interchangeable, probably “attest service,” as defined in s. 442.001 (1), Stats.

d. Given the previous comment, s. Accy 1.003 (2) could then define either “attest service team” or “attest service engagement team,” instead of “attest engagement team.”

e. In s. Accy 1.003 (14), the introduction should conclude with the phrase “does any of the following.” [See also s. Accy 1.003 (16) (intro.).]

f. Section Accy 1.003 (16) defines “key position,” although this term does not appear to be used outside of this definition. Moreover, given the “, or able to influence,” clause in the last sentence of s. Accy 1.003 (16) (c), it is not clear how this definition serves a purpose beyond that served by s. Accy 1.003 (14).

g. Section Accy 1.003 (19) defines “Member” or “member of a firm” in the same way, whereas s. 442.001 (5), Stats., defines only the term “member of a firm.” Because definitions are used to achieve consistency and clarity of terminology [see s. 1.01 (7) (a), Manual], it is preferable to define and use one term consistently, and in this case “member of a firm” is the clearest term and the one defined by statute under s. 442.001 (5), Stats.

h. Section Accy 1.003 (21) and (22) contain two different definitions of “partner”; the first appears to be a noun and the second a verb. There should not be more than one definition of a term applicable within a chapter or section of rules. Moreover, the verb definition in sub. (22) is confusing, with statements such as the following: “The period lasts for the entire duration...which could cover many periods....”

i. The structure of s. Accy 1.003 (25) is awkward. The material in the introduction does not grammatically lead into the following paragraphs. Further, pars. (a) and (b) seem to be guidelines and would more appropriately be placed in a note to the rule.

j. Section Accy 4.037 has a sub. (1), but no sub. (2). When any section, or part of a section, is divided into smaller subunits, at least two subunits must be created. [See s. 1.03, Manual.]

k. Chapter Accy 4, entitled “Biennial Registration,” would appear to be more appropriately titled “Biennial Licensure,” given the changes made by the rule to ch. Accy 4. See comment 1. g., above.

3. Conflict With or Duplication of Existing Rules

By amending the title of s. Accy 1.205 from “accounting standards” to “auditing and attestation standards,” there now appears to be duplication with the title of another rule section: s. Accy 1.202 “auditing standards.”

4. Adequacy of References to Related Statutes, Rules and Forms

a. Section Accy 1.003 (1) (a) to (c) of the rule refers to certain standards that s. 442.001 (1), Stats., requires to be adopted by reference. Section Accy 1.205 (1) to (3), as amended by the rule, incorporates these standards by reference and appears to comply with the provisions for doing so in s. 227.21 (2) (b), Stats. Therefore, s. Accy 1.003 (1) (a) to (c) should refer to s. Accy 1.205 (1) to (3). For example, s. Accy 1.003 (1) (a) could state: “An audit or any other engagement that is performed or intended to be performed in accordance with the statements incorporated by reference under s. Accy 1.205 (1).”

b. In s. Accy 1.404 (2), the rule mistakenly proposes to amend subds. 2. and 3. of par. (a), whereas in the current rule these are subdivisions of par. (b). Also, the subdivisions should end with a period, rather than with the word “or,” and par. (b) (intro.) should be rewritten accordingly and to avoid use of the word “above.” For example: “(b) The prohibition in sub. (1) applies to a business or occupation which does any of the following:....” [See ss. 1.01 (9) (c) and 1.03 (intro.), Manual.]

c. In s. Accy 1.406, “as defined in the statutes” should be replaced with “as defined in s. 442.02, Stats.”

d. In s. Accy 7.05 (1), the rule mistakenly proposes to amend subd. 3. of par. (a), whereas in the current rule this is a subdivision of par. (b).

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the second paragraph of the analysis, last sentence, “of” should be inserted between “ownership” and “firms” to correspond to “ownership of firms” in the third bullet of the next (third) paragraph.

b. In the fourth bullet of the third paragraph of the analysis, a closing quotation mark is missing.

c. In the fourth paragraph of the analysis, last sentence, the phrase “holds out as a CPA” would be clearer if replaced with “holds himself or herself out to the public as a CPA.”

d. Section Accy 1.003 (4) defines the term “client” to mean a person or entity, other than a member’s employer. In the definition, the term “employer” does not include an entity engaged in the practice of public accounting. However, a member can be an employee of a firm and a firm is an entity that is licensed to practice as a certified public accountant. [See s. Accy 1.003 (11) and (19).] The circularity of these definitions appears to lead to the result that a member’s employing firm could be a client of the member. The definitions should be clarified.

e. In s. Accy 1.003 (4) (b) (intro.), apparently the word “that” should be deleted before the colon and replaced with “is any one of the following.” “Is” should then be deleted from each of the following subdivisions.

f. The definition in s. Accy 1.003 (6) is somewhat contradictory. The provision defines the term “commission” to include compensation for referring any product or service to be supplied by another person. However, the definition excludes a referral fee from the meaning of the term “commission.” The language should be clarified.

g. In s. Accy 1.003 (9), it appears that the word “or” should be inserted before the word “litigation” and the word “and” following the phrase “litigation support services” should be replaced by the word “or.” [See also s. Accy 1.003 (23).]

h. In s. Accy 1.003 (16) (c), the word “above” should be replaced by the phrase “in this (par.).”

- i. In s. Accy 1.003 (20), the last two sentences should be placed in a note to the rule.
- j. In SECTION 11 of the rule, there should be a period instead of a colon after “repealed.”
- k. In s. Accy 1.205, subs. (1) and (2) refer to “statements” as plural, so “is incorporated” should be changed to “are incorporated.” Is s. Accy 1.205 (3) correct in referring to “statement” as singular?
- l. Whereas the “Accounting and Review Services Committee” is not capitalized in s. Accy 1.205 (2) and (3), it is in s. Accy 1.003 (1) (b) and (c). Also, the “Consulting Services Executive Committee” is not capitalized in s. Accy 1.205 (3), but it is in s. Accy 1.003 (1) (c). Finally, sometimes the “Institute of Certified Public Accountants” is capitalized in the rule, e.g., in s. Accy 1.202 (1), and sometimes it is not, e.g., in s. Accy 1.405 (3) (a). In general, the proper names of organizations are capitalized. [See s. 1.01 (4), Manual.]
- m. In s. Accy 1.301 (2) (d), “the” should be inserted between “by” and “duly,” since “body” is singular.
- n. In s. Accy 1.401 (2) (b) 2., second line, the comma should be deleted after “which” and inserted after “document.”
- o. In s. Accy 1.401 (2) (c), last sentence, the extent of the applicability of the definition should be clearly stated; for example, “In this paragraph: ”. [See s. 1.01 (7), Manual.]
- p. In s. Accy 5.03 (2) (a), there should be a comma after “knowledge.” In s. Accy 5.03 (2) (c), the “when” after “it” should be deleted.