

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Board of Accountancy	801
Agency and Division	Administrative Rules
Chapter Number	
Kimberly Bennett 378-4181	3218 Pringle Rd SE #110 Salem OR 97302 503-

Rules Coordinator	Address
Telephone	

RULE CAPTION

Business transactions with clients.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

December 1, 2008	10:00 – Noon	3218 Pringle Rd SE Salem OR 97302	Stuart Morris, PA
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Hearing Date	Time	Location	Hearings Officer
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Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:
801-030-0020

REPEAL:

RENUMBER:
AMEND & RENUMBER:

Stat. Auth: ORS 670.310, 673.410

Other Auth.:

Stats. Implemented: ORS 673.445, 673.410

RULE SUMMARY

Revisions require written disclosure when licensees and clients engage in business transactions that may affect the licensee's objectivity.

December 1, 2008

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Carol Rives, Administrator

10/15/2008

Signature Printed name Date

*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form

Board of Accountancy
Agency of Division

OAR Chapter 801
Administrative Rules Chapter Number

In the Matter of the Board of Accountancy)	Statutory Authority
Amending rules in Chapter 801, Division 030)	Statutes Implemented
Related to rule filing procedures)	Statement of Need
)	Principal Documents Relied Upon
)	Statement of Fiscal Impact

Statutory Authority: ORS Chapter 670.310, 673.410

Other Authority: None

Statutes Implemented: ORS 673.445, 673.410

Need for the Rule(s): Ensure public protection.

Documents Relied Upon*: None

Fiscal & Economic Impact, including Statement of Cost of Compliance: None

How were small businesses involved in the development of this rule? Small business interests were represented through two professional organizations attendance at Board meetings where rule revisions were discussed.

Administrative Rule Advisory Committee consulted? The Complaints Committee participated in the development.
If not, why?

Signature	Carol Rives, Administrator	10/15/2008
	Printed Name	Date

* The documents listed are available for public inspection at the office of the Oregon Board of Accountancy, 3218 Pringle Road SE, Suite 110 Salem, Oregon 97302-6307, during regular business hours, 8:00 am to 5:00 pm, Monday through Friday.

CODE OF PROFESSIONAL CONDUCT

Other Responsibilities and Practices

801-030-0020 (1) Professional misconduct.

(a) A licensee shall not commit any act or engage in any conduct that reflects adversely on the licensee's fitness to practice public accountancy.

(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others or for the laws of the state and the Nation. The acts or conduct in question must be rationally connected to the person's fitness to practice public accountancy.

(c) A licensee shall not act in a way that would cause the licensee to be disciplined for violation of laws or rules on ethics by a federal or state agency or by any jurisdiction for the practice of public accountancy.

(d) A licensee shall not engage in acts of gross negligence including, but not limited to:

(A) Failure to disclose a known material fact which is not disclosed in the financial statements, but disclosure of which is necessary to make the financial statements complete or not misleading, or

(B) Failure to report any known material misstatement which appears in the financial statements.

(2) Verification of experience for CPA or PA applicants.

(a) Licensees who supervise the work experience of CPA or PA applicants for the purpose of verifying the applicant's eligibility under ORS 673.040 shall provide to the Board an accurate and complete certificate of experience for the applicant. Licensees who provide any certificate of experience for an applicant shall not:

(A) Make any false or misleading statement as to material matters in any certificate of experience, or

(B) Commit any act that would unjustly jeopardize an applicant's ability to obtain a certificate in this or any other jurisdiction.

(3) **Acting through others.** A licensee shall not permit others to perform any acts on behalf of the licensee, either with or without compensation, which, if performed by the licensee would place the licensee in violation of the Code of Professional Conduct.

(4) **Public communications and advertising.** A licensee shall not use or participate in the use of any form of public communication, including the use of internet domains, e-mail names, advertising or solicitation by direct personal communication, having reference to the licensee's professional services that contains a false, fraudulent, misleading, or deceptive statement or claim. A false, fraudulent, misleading, or deceptive statement or claim includes, but is not limited to, a statement or claim that:

(a) Includes a misrepresentation of fact;

(b) Is intended or likely to mislead or deceive because it fails to disclose relevant facts;

(c) Is intended or likely to create false or unjustified expectations of favorable results;

(d) Falsely states or implies educational or professional attainments or licensing recognition;

(e) Falsely states or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of public accounting;

(f) Falsely represents that professional services can or will be competently performed for a stated fee, or misrepresents fees for professional services by failing to disclose all variables affecting the fees that will in fact be charged; or

(g) Contains other representations or implications of fact that would cause a reasonable person to misunderstand or be deceived.

(5) Professional designations. A licensee shall not represent that the licensee is a member of any professional society, association, organization or an association of firms, or that the licensee has a correspondent relationship with another licensee unless the representation is true at the time it is made or published.

(6) Firm names.

(a) False and misleading firm names.

(A) A public accounting firm shall not offer or provide public accounting services using a firm name that is misleading as to the legal entity or organization of the firm, as to the owners or employees of the firm, or as to any matter restricted by section (4) of this rule.

(B) A firm name shall not include false or misleading language about the business organization of the firm, the nature of the services provided, the number of licensees associated with or working for the firm or the identity of individual members of the firm. Except as provided in paragraphs (D) and (E) of this subsection, a firm name shall not include information about or indicate an association with, individuals who are not members of the firm.

(C) A firm name shall include words or abbreviations required by the laws under which the business organization is organized to identify the form of business organization or legal entity being used by the firm.

(D) A firm name may be composed of the names of one or more past partners, shareholders, owners, or members of the business organization or its successor, so long as the past partner, shareholder, owner or member:

(i) Is not actively engaged in the practice of public accountancy as a sole proprietor in the same market area, and

(ii) Approves in writing of the continued use of such name. Approval given by a licensee for the continued use of licensee's name may be withdrawn by the licensee, in writing and shall allow a reasonable period of time for the firm to withdraw such name.

(E) A partner, shareholder, owner or member surviving the death or withdrawal of all other partners, shareholders, owners or members may continue to practice under the firm name provided that the firm meets the requirements stated in this rule.

(b) Singular firm names. The use by a certified public accountant or public accountant in individual practice of the individual's full legal name in the singular form, followed by the title "Certified Public Accountant," "Public Accountant", "CPA" or "PA" is not misleading.

(c) Plural firm names.

(A) The use by a firm of a plural title or designation, including words like "company", "and company", "associates" and "accountants", is not misleading if, in addition to the names of persons included in the firm name, the firm employs at least one staff person, who works a minimum of 20 hours per week, who is licensed to practice public accountancy under ORS 673.150, and whose permit is not revoked, suspended, lapsed or inactive.

(B) A firm using a plural name that ceases to employ at least one licensed staff person for 20 hours per week or more shall:

(i) Cease using the plural name and so notify the Board in writing; or

(ii) Notify the Board in writing within 30 days of non-compliance. Such firm shall have 90 days in which to employ a licensed staff person as required under paragraph (A) of this subsection. The firm shall provide written notice to the Board when the firm has employed the required licensed staff person.

(C) A firm may file a written request for an additional 90-day extension in which to employ the required licensed staff person.

(d) Assumed business names.

(A) A firm name that does not include the designations "PC", "LLC", "LP", or "LLP" to indicate the form of legal entity through which the practice of public accountancy is being conducted, or that does not include the full legal name of every owner of such business organization, shall be filed as an assumed business name with the Corporations Division of the Office of the Secretary of State. A copy of the registration of the assumed business name shall be provided to the Board with the application for registration as a firm and with every renewal application.

(B) An assumed business name that is registered with the Corporate Division of the Office of the Secretary of State may be composed in whole or in part of initials. Such abbreviated firm name shall not spell a word or form an acronym that may be misleading to the public. Every assumed business name shall meet the requirements of paragraph (6)(a)(B) of this rule.

(e) Notice to Board. A business organization registered as a firm under ORS 673.160 shall provide the following information to the Board:

(A) List of the names and certificate or license numbers of all Oregon licensees employed by the firm at the time of application for registration as a firm and with every renewal application, and

(B) Written notice of any change of firm name, firm address or firm ownership within 30 days of such change.

(7) Board communications and investigations.

(a) Communications from the Board to licensees shall be sent by first class mail or certified mail and addressed to the licensee at the last official address or the alternate address furnished to the Board by the licensee.

(b) Licensees who receive any Board communication requesting the licensee to provide a written response shall:

(A) Provide a written response to the Board within 21 days of the date the Board communication was mailed,

(B) Respond fully and truthfully to inquiries from and comply with all Board requests.

(c) The Board of Accountancy shall provide written notice to licensees of complaints filed against the licensee and of any Board investigation that affects the licensee. Licensees who receive notice of a complaint investigation:

(A) Shall cooperate fully with all Board investigations, including any request to appear to answer questions concerning such investigations, and

(B) Shall not engage in any conduct or activity that would hinder or obstruct a Board investigation.

(8) Business transactions with clients.

(a) Except for business transactions that occur in the ordinary course of business, licensees shall not enter into a business transaction with a client if the licensee and client have differing interests therein unless the client has consented in writing to the transaction after receiving full disclosure of the differing interests in writing. Disclosure in writing Both written disclosures and client's written consent shall be made prior to the time the business transaction is accepted.

(b) A loan transaction between a licensee and a client does not require disclosure under this rule if the client is in the business of making loans of the type obtained by the licensee and the loan terms are not more favorable than loans extended to other persons of similar credit worthiness and the transaction is not prohibited by other professional standards.

(9) Notification of change of address, employer or assumed business name.

Licensees are required to maintain a current record with the Board of the information described in this rule, and to provide written notice to the Board of any change in such

information within 30 days of such change. Written notice required under this rule may be provided by US mail, private delivery service, fax transmittal, e-mail or personal delivery. The information required under this rule will not be accepted over the telephone:

(a) Licensee's current business and residential addresses. If the number of a post office box, mail drop or pick-up service is provided for either address, the licensee must also provide the physical address;

(b) The name and address of licensee's current employer; and

(c) Any assumed business name used by licensee, if licensee is conducting the practice of public accountancy under an assumed business name.

(10) Child support defaults. In accordance with ORS 25.750 to 25.783, the Board shall provide the Support Enforcement Division of the Department of Justice with certification and licensing information which may be electronically cross-matched with Support Enforcement Division's records for persons under order of judgment to pay monthly child support and who are in arrears according to ORS 25.750(a), (b) and/or (c).

(a) The Board shall suspend a licensee's certificate or license and permit to practice upon notice from the Support Enforcement Division or the appropriate District Attorney that such licensee is in arrears of any judgment or order requiring the payment of child support and such payment is being enforced under the provisions of ORS 25.080.

(b) Pursuant to ORS 25.762 or 25.765, the Board shall notify the licensee of the action being taken and refer such licensee to the Support Enforcement Division or the District Attorney for resolution of the support payment issue.

(c) Upon notification by the Support Enforcement Division or District Attorney and receipt of a release notice that the conditions resulting in the action have been resolved, the Board shall reinstate the licensee's certificate or license and permit to practice upon compliance with any additional requirements for issuance, renewal or reinstatement.

(11) State tax defaults. In accordance with ORS 305.385, and upon request by the Department of Revenue (DOR), the Board shall provide DOR with license information for the purpose of determining whether a licensee has neglected or refused to file any tax return, or neglected or refused to pay any tax without filing a petition with DOR as stated in ORS 305.385(4)(a).

(a) The Board shall issue a notice of proposed action against a licensee who is identified by DOR under this rule. The licensee shall be provided with the opportunity for hearing as provided in ORS 183.310 to 183.550 for contested cases.

(b) Upon notification by DOR and receipt of a certificate issued by DOR that the certificate/license holder is in good standing with respect to any returns due and taxes payable to DOR as of the date of the certificate, the Board shall renew or reinstate the certificate or license and permit to practice upon compliance with any additional requirements of the Board for issuance, renewal or reinstatement.

(12) Continuing violation. A continuing violation is a violation of any provision of ORS 673.010 – 673.457 or OAR chapter 801 that remains in place (“continues”) without additional conduct on the part of the violator. For example the continued existence of an office sign purporting to offer public accounting services by an unregistered firm would be a continuing violation. The Board shall provide written notice of the alleged continuing violation to the individual or firm. The duration of the violation prior to the date of notice from the Board shall be deemed a single violation, and each day of continuance after the date of notice from the Board is a separate violation and may be subject to a civil penalty.

(13) Non-Disclosure Agreement. “Non-disclosure agreement” means any written or oral agreement that inhibits any party to the agreement from reporting an alleged violation of ORS chapter 673 or OAR chapter 801 to the Board, or that inhibits

any party from cooperating with an investigation by the Board, an agency of any state, or an agency of the Federal government.

(a) Licensees shall not enter into, nor benefit directly or indirectly from, any non-disclosure agreement.

(b) Any licensee who is a party to a non-disclosure agreement and who receives written notice from the Board, an agency of any state, or an agency of the Federal government requesting information that is subject to the provisions of such non-disclosure agreement, shall provide a written release for information requested within 30 days of the date of notice.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.160, 673.410 & 673.445

Hist.: AB 1-1978, f. & ef. 1-11-78; 1AB 1-1981, f. 1-6-81, ef. 6-1-81; 1AB 3-1981, f. & ef. 1-6-81; 1AB 2-1984, f. & ef. 5-21-84; 1AB 3-1986, f. & ef. 11-17-86; AB 3-1989, f. & cert. ef. 10-3-89; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 3-1996, f. & cert. ef. 9-25-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 5-2002 f. 12-27-02, cert. ef. 1-1-03; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2005, f. & cert. ef. 8-12-05; BOA 9-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 3-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2007, f. 12-27-07 cert. ef. 1-1-08