

STATEMENT OF NEEDS AND REASONABLENESS

(Proposed permanent rules relating to Continuing Professional Education)

1100.6400

Using the term "continuing professional education" rather than just "continuing education" is a technical change (which is made throughout these rules). We call our program continuing professional education and we use the abbreviation "CPE" as a shorthand way to refer to it. To maintain consistency this change is necessary. Continuing professional education is a more accurate term and will give better understanding to the practitioners and public who use it; and it is therefore reasonable to use it.

The deletion of the reference to 1100.7900 is because that section is repealed. That section talked about the first reporting period for CPE back in 1977 to 1980. Everyone has already reported their CPE from that period and there is no way it will ever need to be used again. It is therefore necessary to repeal that section as needless verbiage that adds nothing to the current rule and reasonable because it eliminates confusion to the reader and redundancy.

1100.6500 Subp. 1 Basic Requirement

This entire section has been rewritten to recognize the fact that we are switching our CPE program from a calendar year

program to a state fiscal year program. This schedule is necessary to permit Board staff to administer the program more effectively and more efficiently and therefore to be able to provide better service to our clients (both the licensees and the public). The current system has CPE due on December 31, the exact same time as individual and corporate license renewals. If there is a problem with someone's CPE we have to hold up their individual license, and, if they work for a firm, the entire firm license as well. The proposed change will solve this problem by making CPE due six months before re-licensure. This gives the Board staff six months to deal with any CPE problems before we get into the re-licensure situation. Also, the December/January period is a very busy time for the staff in terms of all the re-licensing activities (9,000 some licenses each year). Whereas the June/July period is more of a "down time" where the staff will have more time to deal with CPE and scrutinize it for compliance with the rules. For all these reasons this change is necessary. It is reasonable in that it will allow us to put more emphasis on CPE and to better serve our clients.

1100.6500 Subp. 1: A, B, C

This is the actual language to designate the 3 reporting cycles that individuals are currently assigned to based upon their date of original licensure. For the first time these dates will actually be spelled out in the rules. These sections incorporate

the new due dates for reporting CPE of June 30 instead of December 31. They also give current licensees an additional six months to comply during the change over period. Thus those people originally scheduled to report this December 31, 1993 will report on June 30, 1994; those people scheduled for December 31, 1994 will have until June 30, 1995; and the final group set for December 31, 1995 will have until June 30, 1996. And then for all future licensees, they will be on the fiscal year cycle based upon the fiscal year of their initial licensure. These changes are necessary to implement the change from a calendar year to a fiscal year. They are reasonable in that they will give better notice to all licensees as to exactly what date they will have to report on or before.

1100.6500 Subp. 2

Adding the words "licensees shall have the burden of proving such hardship" is necessary to give notice to licensees that if they are trying to prove a hardship it is up to them to supply the necessary proof to the licensing committee/board. It is reasonable in that it clarifies to the licensees where the burden lies and gives them notice.

1100.6500 Subp. 3

The effective date language (three years after a licensee's initial licensure) is no longer necessary because we have

explicitly set out the dates in Subp 1: A, B, C. The language in Subp 1: A, B, C is much more explicit and will give better notice to licensees than this old language did. It is necessary to repeal this section because it is not necessary, and reasonable to repeal it in order to avoid confusion to readers and eliminates redundancy.

1100.6500 Subp. 4

This section incorporates the new concept of annually reporting at least 20 hours of CPE (by the end of the fiscal year). This is a new concept for the Board, but it is something that is widely used in the profession. A majority of states that require CPE have an annual reporting minimum. The American Institute of Certified Public Accountants (the national organization for CPA's) has a 20 hour per year requirement. This is necessary to ensure that CPA's and LPA's take some CPE each year, and don't just wait for the end of their 3 year cycle and try to jam in all 120 hours at once, whether or not the courses they choose, or are forced to take by time constraints, are relevant to their practice. It also encourages licensees to take annual courses, for example the annual tax conference, which gives you the latest changes in the professional annually. The Board feels this is really needed to improve our CPE program, and most practitioners will not find it to be a new requirement or something that they cannot easily accomplish. It is reasonable because it is consistent with the

AICPA requirement and that of other states, and because it encourages scholarship on the part of licensees.

1100.6500 Subp. 5

This is required by Minn. Rules pt. 1100,6500, Subp. 1. However, non-renewal of licenses as a sanction for failure to report CPE is not specifically stated. In the past, some practitioners have not taken their CPE reporting seriously and, as a result, the Board has had to initiate disciplinary proceedings against them. This rule is therefore necessary to clarify that compliance with the CPE rules is a prerequisite for renewal of your license. It is reasonable because the existence of that sanction is set forth clearly so that licensees are aware of it.

1100.6700 Subp. 4

Changing "licensees" to "former active licensees" and then striking out all of the categories makes this rule more easily understood and gives better notice to those who come under it. In fact, you could not "reenter" if you had not held a license, so the previous language was somewhat misleading. The change is therefore reasonable and necessary.

1100.6700 Subp. 4. A

It is necessary to use "Former active licensee" because it is more descriptive than "individual." It is reasonable because it makes

the rule easier to understand in terms of who this section is directed to.

The last part of the sentence, "prior to application for active licensure" is necessary because we are going away from the calendar year licensure where both CPE and licensure renewal dates were the same. Since that is no longer true, the words "before licensure" need to be struck and the new term put in. This is reasonable and necessary so that this rule is consistent with the rest of the rules.

The change from "40" to "50" hours is necessary because old sections "C" and "E" have been eliminated. The Board's original intent had been to require someone reentering active public practice to bring themselves up to speed. This was accomplished by section A, C and E which were inserted when the rules were last changed. But in reality when you put all three requirements together, especially in changing from a calendar to fiscal year, the Board felt that this CPE requirement had become onerous at best and was not what they had really intended. The result was that some people, who found themselves in this situation, did not reactivate their license and simply began practicing illegally. Therefore the Board has combined the concepts incorporated in sections A, C, and E into one, and made the change in section A from 40 to 50 hours. This both effectuates their purpose (to get the reentering licensee up to speed) and is not an overwhelming

burden on the former active licensee who wants to return to the active practice of public accounting. This change is reasonable in that it effectuates the Board's original intention of encouraging former active licensees, to return to active licensure. It is also necessary to ensure their competency.

1100.6700 Subp. 4. old C

With the change in part A (as we have just explained) this section is no longer necessary.

1100.6700 Subp. 4. old D, new C

"Once relicensed as active" describes the person we are talking about, and the reference is to the three reporting cycles.

This new language is necessary because it makes everything conform to the changes described earlier and is reasonable in that it gives better notice to those people reading the rules.

1100.6900

The new language in this section is necessary to provide better guidelines to licensees, as to what type of courses are acceptable and to focus CPE on professional development courses directly related to the accounting profession. The Board has found too many general computer and behavioral courses being reported. This rule is reasonable because it will focus licensees on accounting skills and not general skills.

RULE CHANGES - IMPACT ON SMALL BUSINESS

The Board notes below how the five suggested methods listed in section 14.115, subdivision 2, for reducing the impact of the rules on small businesses should be applied to the proposed rules. The five suggested methods enumerated in subdivision 2 are as follows:

- (a) The establishment of less stringent compliance or reporting requirements for small businesses;
- (b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- (d) The establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
- (e) The exemption of small businesses from any or all requirements of the rule.

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

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

Methods (a) to (c) relate to lessening compliance or reporting requirements for small businesses either by establishing less stringent requirements, establishing less stringent schedules or deadlines for compliance with the requirements, or consolidating or simplifying the requirements. The Board finds that it would be unworkable to lessen the requirements for those licensees who practice in a solo, or practice consisting of fewer than 50 employees, since that would include, at a minimum, the vast majority of all licensees. Method (d) suggests replacing design or operational standards with performance standards for small businesses. The Board's rules do not propose design or operational standards for businesses and therefore there is no reason to implement performance standards for small businesses as a replacement for design or operational standards that do not exist. Finally method (e) suggests exempting small businesses from any or all requirements of the rules. The application of this provision would exempt a large percentage of licensees from the purview of the rules, which would not make sense.

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

Pursuant to Minn. Stat. Section 326.165, et seq., the Board was created for the purpose of establishing requirements for licensure and adopting standards for disciplinary action to govern the practices or behavior of all licensees. Pursuant to Minn. Stat. Section 326.18 the Board is specifically mandated

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

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