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OFFICE OF THE COMMISSIONER

# STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

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September 21, 1993

Legislative Commission to Review Administrative Rules  
55 State Office Building  
100 Constitution Avenue  
St. Paul, MN 55155  
ATTN: Michelle

Re: Proposed Rules Governing Licensing and Education of Residential Building Contractors and Remodelers

Dear Michelle:

Pursuant to Minnesota Statutes Section §14.23 we enclose a copy of the Statement of Need and Reasonableness for the above-referenced rules.

Should you have any questions about these rules, please call me at 297-1118.

Sincerely,

JAMES E. ULLAND  
Commissioner of Commerce

By:

Donna M. Watz  
Staff Attorney

The Legislative Commission to  
Review Administrative Rules

SEP 22 1993



DMW:joc



**STATE OF MINNESOTA  
DEPARTMENT OF COMMERCE**

In the Matter of the Proposed  
Rules Governing Licensing and  
Education of Residential Building  
Contractors and Remodelers

STATEMENT OF NEED  
AND REASONABLENESS  
OF PROPOSED RULES

**STATEMENT OF AUTHORITY**

Minnesota Statutes § 326.98 states that the Commissioner of Commerce may adopt rules as necessary to administer and enforce the provisions of Minnesota Statutes § 326.83 to 326.991. Minn. Stat. § 326.87, subd. 1 permits the Commissioner, in consultation with the Builder's Advisory Council, to adopt standards for continuing education requirements and course approval. These rules are proposed pursuant to that authority. The purpose of the rules is to provide guidance to members of the contracting industry by setting forth required business practices, enumerating certain prohibited practices, and providing standards and procedures for continuing education.

The proposed rules relating to prohibited practices will inform licensees under this statute of practices which may give rise to suspension or revocation of their licenses, and will also provide the Commissioner with an objective basis on which to make decisions regarding administrative action against licensees. With regard to continuing education, the statute mandates that, "except for the course content, the standard must be consistent with the

standard established for real estate agents and other professions licensed by the Department of Commerce." Minn. Stat. § 326.87, subd. 1. Giving attention to this directive, the rules have been drafted to conform in style and content as closely as practicable to the rules governing the education and licensing of real estate, insurance and other professions regulated by the Department of Commerce.

Minnesota Statutes § 326.85 provides for the creation of a builder's advisory council appointed by the Commissioner, consisting of industry, government and public members. This advisory council is charged by the legislature with advising the Commissioner on matters relating to the residential building contractor and remodeler licensing statute. Minn. Stat. § 326.85, subd. 3. The members of the advisory council have been provided copies of the rules in their various stages of development and have been given opportunity to comment and make recommendations. The rules as published incorporate the input of the council.

In addition to the Builder's Advisory Council, the Department consulted with representatives of Vocational Technical Schools, with local building officials, and with representatives of the industry, including the Builders Association of Minnesota, in order to learn their perspectives on what was needed in regard to these rules. The rules reflect the concerns raised by these groups.

### FACTS ESTABLISHING NEED AND REASONABLENESS

As more specifically set forth below, the proposed rules are necessary to implement Minnesota's residential building contractor and remodeler licensing law.

By enacting Minnesota Statute § 326.91, the Minnesota legislature authorized the Commissioner of Commerce to deny, suspend or revoke a license, or censure a licensee, if in the public interest, and if the licensee engages in certain prohibited practices. Minnesota Statute § 326.91, subd. 1(2) authorizes license action if the licensee "has engaged in a fraudulent, deceptive, or dishonest practice." Section 326.91, subd. 1(6) permits action if a licensee "has been shown to be incompetent, untrustworthy, or financially irresponsible."

The statute offers no further guidance as to what acts may be considered to fall within these categories. Therefore, the proposed rules are necessary to set guidelines for industry practice, both in establishing certain affirmative requirements to ensure responsible business practice, and in delineating what kinds of acts constitute fraudulent, dishonest or deceptive practices, or may result in a licensee being found incompetent, untrustworthy, or financially irresponsible.

With regard to continuing education rules, the statute gives the Commissioner the authority to establish standards for continuing education requirements and course approval, and directs

that these standards must be consistent with those established for real estate agents and other professions licensed by the Department of Commerce. The statute offers no further specific guidelines or requirements for continuing education.

These rules are necessary to enable the Department to establish and administer an effective and reasonable continuing education program. These criteria for course approval, instructor and coordinator qualifications, administration of courses, record-keeping, and the numerous other facets of regulating continuing education are consistent with, and have demonstrated to be effective in, the real estate, insurance, and appraiser industries.

#### REASONABLENESS OF SPECIFIC RULE LANGUAGE

Part 2891.0010. Change of Business Name or Address. This part requires notification of the Commissioner if a change occurs in any of the substantive information which the licensee provided to the Commissioner on its license application. This information is necessary in order to assure unbroken communication between the licensee and the Commerce Department, and to keep current information available both to the Department and to consumers who may wish to inquire about a licensee. A similar notification requirement appears in the rules governing real estate licensing.

Part 2891.0020. Records. This part requires that a licensee maintain written records for a reasonable period after each project is finished. This part assures that accurate records of the

transaction will be available: 1) for reference by the contractor or customer; 2) to help fairly resolve any dispute which may arise; and 3) to provide information to the Department in the event of an investigation. Similar record-keeping requirements appear in the rules governing insurance agents.

Part 2891.0030. Written Contract Required. By requiring that contracts between licensees and consumers be reduced to writing, this part ensures that the major elements of a contracting job will be discussed by both parties, and that the parties will reach an understanding, prior to any work being done, about each party's expectations. This requirement assures that terms of the contractor will be available to the Department in the event of an investigation. This part also requires that a copy of each contract be provided to the customer. This provides a reference for the customer, and assures both parties that no unauthorized changes can be made. This requirement parallels requirements for written listing agreements and buyer-broker agreements in the real estate licensing statute and rules.

**PART 2891.0040. BUILDING CONTRACTORS; PROHIBITED PRACTICES**

Subpart 1. Description. This part supplements Minn. Stat. § 326.91, subd. 1 (2) by delineating specific acts which constitute fraudulent, deceptive, or dishonest practices. The purpose of this part is to provide guidance to members of the contracting industry regarding practices which may give rise to denial, suspension or revocation of their licensees, and to provide the Commissioner with an objective basis on which to base decisions regarding

administrative action against licensees.

Subpart 1, Item A. This item prohibits misrepresentations on an applicant's initial license application. This is necessary to protect the integrity of the licensing program. Issuance of a license by the Minnesota Commerce Department indicates that the applicant has met certain standards; any misrepresentation on the application endangers the Commissioner's ability to assure the public that the applicant is qualified to act as a contractor or remodeler. This is the same prohibition found in the real estate broker practice rules.

Subpart 1, Item B. This item prohibits any misrepresentations in a licensee's advertising. Minnesota consumers should be able to rely on the information presented to them by licensees. By requiring truth in contractor advertising, this item helps protect consumers from licensees who may not be qualified to deliver what their advertising promises, or who may be attempting to deceive customers through false advertising. It will also help maintain consumer confidence in the contracting and remodeling industry. This parallels a similar prohibition in the real estate broker practice rules.

Subpart 1, Item C. This item protects consumers by prohibiting dishonesty in the negotiations leading up to the establishment of the contract between contractor and customer. Consumers contracting for construction or remodeling of a home often lack sufficient knowledge and understanding about the building trades to be able to tell when a contractor or remodeler



is misrepresenting the cost or technical requirements of the job being contracted for. This puts the consumer in an unfair bargaining position. This item makes such misrepresentation grounds for license action.

Subpart 1, Item D. The Minnesota consumer has a right to expect that the documents that they rely on in any transaction with a licensed contractor or remodeler are authentic. This item will help to protect consumers from the problems which arise from the use of forged documents such as lien waivers or warranties. This part also prohibits altering any document after it has been executed. Although this subpart is aimed mainly at consumer protection, it will also serve to protect other members of the contracting and remodeling industry, including subcontractors, mortgage companies, and material suppliers.

Subpart 1, Item E. This item is necessary to prevent licensees from disguising their activities by operating under a name which is not on record with the Department. It allows consumers to determine whether a business is properly licensed, and to make inquiries regarding the business reputation of the licensee. It also allows the Department to track a licensee's business activities in the event of an investigation. This prohibition is also found in the real estate broker practice rules.

Subpart 1, Item F. This item is necessary to prevent a residential contractor or remodeler from conducting business during a period when its license is invalid. A license suspension or revocation is an indication that the contractor or remodeler is

either ineligible for licensure, or is under penalty for violation of the license law. In addition, if a license is inactive, the contractor or remodeler need not maintain the liability insurance required by the statute and is not covered by the Statutory Recovery Fund. Therefore, any consumer dealing with a contractor or remodeler whose license was inactive would not be offered those protections.

Subpart 1, Item G. A license issued by the Commissioner of Commerce is intended to assure a certain minimum level of competency in the business licensed. Contracting for activities not covered by the license issued defeats the purpose of the licensing program.

Subpart 1, Item H. This item is intended to ensure that licensed contractors and remodelers obtain the necessary permits for the building projects they undertake. Failing to obtain permits is an evasion of law. It may subject consumers to substandard performance, and may also cause consumers to incur considerable expense if they are required to upgrade the construction to conform to codes. Consumers may also find themselves subject to fines from local government units if building projects are undertaken in disregard of permit requirements.

Subpart 2. Nonlimitation of Authority. This subpart is necessary to prevent these rules from impermissibly altering the legislative intent, which was to permit the Commissioner to take administrative action against a licensee for any practice which is

fraudulent, deceptive or dishonest. It clarifies that the Commissioner of Commerce is not restricted from taking action against a licensee in the event that the licensee engages in a practice which is fraudulent, dishonest or deceptive, even though that practice may not be specifically enumerated in the preceding rules. No list can anticipate every act which would violate the intent of the statute.

**PART 2891.0050. INCOMPETENT, UNTRUSTWORTHY OR FINANCIALLY IRRESPONSIBLE PRACTICES.**

Subpart 1. Description. This subpart supplements Minn. Stat. § 326.91, subdivision 1, clause (6), by delineating specific acts which constitute incompetent, untrustworthy, or financially irresponsible practices. The purpose of this part is to provide guidance to members of the contracting industry regarding practices which may give rise to denial, suspension or revocation of their licenses, and will provide the Commissioner with an objective basis on which to base decisions regarding administrative action against licensees.

Subpart 1, Item A This item is necessary to ensure that licensees maintain good business practice, that comply with certain Minnesota laws designed to protect workers and consumers. Failure to maintain required workers' compensation, liability, or employment insurance is an evasion of law which leaves workers and consumers without legally mandated protection. In addition, failure to comply with laws may subject the licensee to government

action which would jeopardize the building project.

Subpart 1, Item B. This item is mandated by Minn. Stat. § 270.72. It is stated in the rules to give notice to contracting and remodeling licensees that delinquent taxes will jeopardize their occupational license.

Subpart 1, Item C. This item is necessary to ensure that licensees employ good business accounting practices, and that customer funds provided for a project are used for the intended purposes and not diverted to another project.

Subpart 2. This subpart is necessary to prevent these rules from impermissibly altering the legislative intent, which was to permit the Commissioner to take administrative action against a licensee for any practice which is incompetent, untrustworthy, and financially irresponsible. It clarifies that the Commissioner of Commerce is not restricted from taking action against a licensee in the event that the licensee engages in a practice which is incompetent, untrustworthy, or financially irresponsible, even though that practice may not be specifically enumerated in the preceding rules. No list can anticipate every act which would violate the intent of the statute.

#### CONTINUING EDUCATION

#### PART 2891.0060 DEFINITIONS

Subpart 1. Scope. This part defines terms as they relate to residential building contractor and remodeler continuing education.

These definitions clarify the terms used in the body of the rules.

Subpart 2. Coordinator. This definition identifies the person responsible for residential building contractor or remodeling education offerings as opposed to a teacher, instructor or other persons who might otherwise have responsibility for oversight of the educational offering. It is similar to the definition used for real estate continuing education, Part 2800.7400 and insurance continuing education, Part 2725.0100, subp. 2.

Subpart 3. Instructor. This subpart's broad definition is designed to include anyone who lectures in a residential building contractor or remodeler continuing education offering, thereby requiring all such persons to comply with the licensing statutes and these rules. It is consistent with the definitions used for insurance and real estate education instructors. See Parts 2800.7500 & 2725.0100. The definition is designed to remove any questions as to whether a person appearing before students is a lecturer.

Subpart 4. Sponsor. "Sponsor" is defined as any "person" offering or providing residential building contractor or remodeler education of any type. This is an expansive definition designed to remove any doubt that anyone offering any type or residential building contractor or remodeler education comes within the scope of these rules. This definition is consistent with those used in insurance and appraiser continuing education. See Parts 2725.0100, subp. 8, and 2808.0100, subp. 20.

**PART 2891.0070 CONTINUING EDUCATION**

Subpart 1. Minnesota Statute § 326.87 requires that the standard for Building Continuing Education be consistent with the standard established for real estate. Real estate rules require, at 2800.6800, subp. 1, that continuing education consist of approved courses that impart substantive and procedural knowledge. This subpart assures that continuing education courses will improve the licensee's knowledge or abilities in the Building Contractor or Remodeler field.

Subpart 2. Required Courses.

Subpart 2. Item A. This item complies with the statutory requirements in Minnesota Statute § 326.87, subd. 1. that the commissioner's standards for continuing education include a requirement that licensees must complete a minimum of one hour of continuing education relating to lead abatement rules and safe procedures.

Subpart 2. Item B. This item complies with the requirement of Minn. Stat. § 326.87, subd. 1, that the commissioner's continuing education requirements include continuing education in the implementation of energy codes and other building codes designed to conserve energy. In consultation with the Council, it was determined that the constantly changing requirements of this element of the contracting industry necessitate that licensees complete a one hour update during every reporting period.

Subpart 3. Examinations. This subpart clarifies that course examinations are not required for continuing education courses but

also that they are not prohibited. This is consistent with the continuing education rules for insurance (Part 2725.0110, subp. 5), real estate (Part 2800.6800, subp. 4), and appraisers (Part 2808.4000, subp. 8).

Subpart 4. Textbooks. This subpart clarifies that textbooks are not mandatory for continuing education courses. However, if textbooks are not used, certain criteria are set forth to assure that the students obtain the maximum benefit from the course offering. As a minimum requirement, a syllabus containing certain information, including the course title, times and dates of the course offering, names and addresses or telephone numbers of the course coordinator and instructor, and an outline of the subject matter to be covered, must be provided to the student. This is consistent with the real estate continuing education rules (Part 2800.6800, subp. 5, and insurance rules (Part 2725.0110, subp. 6).

Subpart 5. Credit Earned. To help assure that time spent in continuing education classes is meaningful and promotes a licensee's knowledge in the contracting and remodeling fields, this subpart sets out guidelines for the amount of credit to be given for the time spent in the classroom. Licensees shall earn one hour of continuing education credit for each hour of approved instruction. A licensee will only receive credit for attending a course if the licensee completes the course.

As with other types of continuing education, such as real estate, insurance, or appraisers, instructors are allowed additional credit for the time spent in course preparation. This

recognizes the additional time spent and understanding gained by instructors in preparing to teach others.

Also, to assure that the objectives of increasing licensee's knowledge and keeping them current on changes in the contracting and remodeling fields are met, neither students or instructors may earn credit for taking or teaching the same course more than once during a five year period.

Subpart 6. Nonapproved Courses for Continuing Education.

Minnesota Statute § 326.87, subd. 1, requires that continuing education standards for contractors be consistent with standards established for real estate agents and other professions licensed by the Department of Commerce. Subpart 6, Items A, B and C are consistent with standards for non-approval of continuing education courses in the real estate rules, Part 2800.6800, subp. 7. The subject areas excluded by this are also prohibited by the rules governing continuing education for real estate licensees.

Subpart 7. Minnesota Statute § 326.87, subd. 1, requires that continuing education standards for contractors be consistent with those established for real estate licensees. This subpart parallels a similar requirement in the real estate rules, Part 2800.6800, subp. 9, that the person seeking approval for a course has the burden of proving that the course imparts substantive and procedural knowledge because that person has access to information pertaining to the subject matter of the course.

Subpart 8. Minnesota Statute § 326.87, subd. 1, requires that standards for continuing education for contractors be consistent



with those established for real estate licensees. Minnesota Statute § 326.87 also requires that the Commissioner consult with the Builder's Advisory Council in determining standards for course approval. The Commissioner consulted with the Advisory Council members and with other industry representatives to determine that courses leading to the professional designations listed in subpart 8 should automatically qualify for continuing education credit.

**PART 2891.0080 APPLICATION FOR COURSE APPROVAL**

Consistent with requirements for other industries licensed by the Commerce Department, this part requires that applicants for course approval for continuing education must use forms prescribed by the Commissioner. This assures that all necessary information is provided and assists in the expeditious processing of applications.

**PART 2891.0090 COURSE APPROVAL**

Subpart. 1. Approval of Course Offerings. This subpart assures that the basis for course approval or disapproval will comply with Minnesota Statute § 326.87 and the contractor continuing education rules. It also states that continuing education credit will only be given for instructional time, and not for time spent on breaks, meals, or other unrelated activities, thereby assuring that the hours of credit reflect actual instruction received by the licensees.

Subpart 2. Continuing education courses not submitted for advance approval. In certain instances, licensees may attend courses sponsored by parties that have not sought the approval of

the commissioner. If such a course would otherwise meet the requirement for a portion of the continuing education course-work requirement, this subpart offers a procedure by which the licensee may submit a request for approval and be granted course credit. Licensees must use forms prescribed by the Commissioner to assure that all necessary information is provided and to assist in the expeditious process of applications. The procedure is consistent with that set forth in the insurance continuing education rules, Part 2725.0110, Subp. 8, and appraiser rules, Part 2808.3000, Subp. 7.

Subpart 3. Permitted Course Offerings. This subpart establishes that only courses complying with the standard set by Minnesota Statute § 326 may be offered by sponsors. It also provides a mechanism for notifying the Commissioner of any material change in the application or attached exhibit so that the Commissioner has a timely opportunity to review the changes to determine whether the course is still in compliance with criteria for course approval.

PART 2891.0100. NOTICE OF SUBSEQUENT OFFERINGS OF CONTINUING EDUCATION COURSE.

As a means of reducing the burden of course approval for sponsors and the department, this subpart allows subsequent offerings of previously approved education courses upon the submission of a "notice of subsequent course offering" to the Commissioner. The notice must be filed at least 30 days before the course is taught. This period allows the department time to

reconsider its prior approval if problems have subsequently arisen. This procedure is the same as that allowed under the insurance continuing education rules, Part 2725.0110, Subp. 10, and real estate continuing education rules, Part 2800.7200, Subp.6.

**Part 2891.0110 COURSES OPEN TO ALL**

This part is designed to prevent discrimination and increase the access of students to continuing education courses. It requires that courses offered by any entity, such as a particular building contractors or remodelers organization, must be open to all students, including those who may choose not to become a member of the organization. This requirement, therefore, will increase the availability of courses to licensees.

**PART 2891.0120 COURSE COORDINATOR**

Subpart 1. Mandatory. This subpart mandates that each course have one coordinator who is responsible for assuring compliance with the laws relating to continuing education. This person is the one accountable in all respects regarding the course and its compliance with the applicable statutes and rules. This subpart allows for assistants to be hired but does not remove the ultimate responsibility from the coordinator. The requirements and qualifications of course coordinators in the contracting field parallel those in the real estate, insurance and appraiser fields.

Subpart 2. Qualifications. Course coordinators must meet one or more of the following criteria enumerated in this subpart:

A. Minimum of five years as an active residential contractor or remodeler. This assures that the coordinator has working

knowledge of the field in which instruction is offered and accordingly can better relate the course materials to the concerns of licensees.

B. At least three years full time experience in the administration of an education program. This assures that a coordinator has experience as an administrator of education programs and has the skills necessary to coordinate, supervise and administer continuing education programs.

C. A degree in education plus at least two years residential contracting or remodeling experience is an alternative to meeting the requirements of A or B. A combination of practical and administrative experience assures that the individual has elements of the qualifying characteristics described in both A and B above.

Subpart 3. Responsibilities. Since the coordinator is responsible for supervising course offerings, this subpart is necessary to set supervision standards under which courses must be conducted. Subpart 3, Item A, reiterates the coordinator's responsibility to assure compliance with all laws and rules pertaining to residential building contractors and remodelers continuing education.

Several items in this subpart pertain to the coordinator's responsibility to students who are taking courses. While the requirements listed in this subpart may seem obvious, the standards are set forth to ensure that all participants in the continuing education program understand what can be expected of coordinators.

Item B requires the coordinator to monitor courses to assure

that the information provided students is current and accurate and, therefore, of benefit and use to them. Under Item C, the coordinator is required to supervise the courses and instructors and to evaluate both to assure that all areas of the curriculum are addressed without redundancy, and that continuity is present. To assure this, Item D allows the Commissioner to request written evaluation of the courses and instructors.

Item E provides that the coordinator is the person to whom written complaints may be made regarding the course offerings and instructors. The coordinator is charged with the duty of investigating these complaints. The intent of this requirement is to establish the coordinator as the individual responsible to ensure the quality of the courses and the instructors and to address any problems which may arise. The coordinator is also charged, under Item F, with maintaining records relating to course offerings, instructors, and student attendance. This assures that all continuing education records will be accessible for purposes including monitoring student attendance and complaint investigation. Item F also provides for the maintenance of records in the event a sponsor ceases operation, by a custodian acceptable to the Commissioner who will agree to make copies of course attendance acknowledgements available to students. This is necessary to allow students to accurately report their continuing education attendance, or to reconstruct their records in the event of a later inquiry. The requirement that fees for copies of these records be "reasonable" gives notice to students that copies are

not free, and prevents custodians from charging exorbitant fees. This part also makes clear that the commissioner, who has neither staff nor space available, will not serve as the custodian of the course records.

Item G provides that the coordinator be available to the instructors and students throughout the time of the course offerings and that information be provided as to the coordinator's name and telephone number. This helps assure access by interested persons to the person ultimately responsible for the course presented: the course coordinator.

In order to ensure that coordinators maintain their qualification, Item H provides that the commissioner may, if necessary, require coordinators to attend workshops or instructional programs. This part is identical to that found in the real estate continuing education rules, Part 2800.7400, Subp. 4.

Item I charges coordinators with providing course completion certificates to students. This provides the means for verification of student attendance and course completion.

**PART 2891.0130. APPLICATION FOR COORDINATOR APPROVAL**

Applicants must use forms prescribed by the Commissioner to assure that all necessary information is provided and to assist in the expeditious processing of applications. This requirement also appears in the rules for real estate, insurance, and appraiser continuing education.

**PART 2891.0140 INSTRUCTORS**

**Subpart 1. Requirement.** To assure the quality of course

content and presentation, this subpart requires that instructors be qualified by education, training, or experience to teach the course, consistent with the standards for continuing education in the real estate, insurance, and appraiser fields.

Subpart 2. Qualifications. The qualifications set forth for contracting and remodeling continuing education instructors are consistent with those established for instructors in the real estate, insurance, and appraiser fields.

Subpart 2, Item A. This item requires that applicants submit requests for instructor approval on forms prescribed by the Commissioner to assure that all necessary information is provided and to assist in the expeditious processing of applications.

Subpart 2, Item B. To assure that the instructor has the practical or educational background necessary to enable the instructor to effectively teach the course, Subpart 2B requires instructors to satisfy one of the following criteria in order to qualify for approval by the Commissioner:

(1) five years practical experience in the subject area being taught; or

(2) a college or graduate degree in the subject area being taught.

(3) a college degree in any area plus three years experience in the subject area being taught; or

(4) an associate of applied science degree from a technical college plus three years experience in the subject area being taught.

Clauses (1) and (2) describe qualifications identical to those found in the real estate and appraiser continuing education rules. Clause (3) is also identical to those industries except for requiring three years instead of two years practical experience. This change was instituted because of the consensus of the Builders Advisory Council and other industry representatives that the nature of the building trade makes practical experience a more essential element in an instructor. Clause (4) was added to accurately reflect the educational background of many members of the building trades.

Subpart 3. Responsibilities. This subpart describes the responsibilities of instructors in broad, yet sensible, terms. The intent is to ensure competent instruction and a sound educational experience for students by placing an onus on instructors to maintain a good learning environment. At a minimum, and as an example to their students, instructors must comply with the laws and rules pertaining to contractor and remodeler continuing education. To assure that the knowledge imparted to students is of value, instructors must provide them with current and accurate information and be available to answer questions related to the subject being taught. These are basic tenets for sound instruction in any good classroom setting and must be provided to students of the contracting and remodeling professions as well.

An additional responsibility imposed by this subpart is assuring and certifying attendance of students enrolled in courses to provide a record to verify student claims for continuing



education credit.

In order to ensure that instructors maintain their qualifications, Subpart 3.F. requires instructors to attend workshops or instructional programs as reasonably required by the Commissioner, as required under the continuing education rules for real estate. This requirement parallels the similar requirement for course coordinators set forth in Part 2891.0120, Subp. 3. H.

**PART 2891.0150. APPLICATION FOR INSTRUCTOR APPROVAL FOR CONTINUING EDUCATION**

Applications for approval for residential building contractors or remodeling continuing education instructors must be made on forms prescribed by the Commissioner to assure that all necessary information is provided and to assist in the expeditious processing of applications.

**PART 2891.0160 PROHIBITED PRACTICES FOR SPONSORS, COORDINATORS, AND INSTRUCTORS.**

Subpart 1. Prohibitions. This subpart specifies conduct that is prohibited on the part of the education course sponsors, coordinators and instructors. With respect to Items A, B and C of this subpart 1, it is recognized that continuing education must provide sound and reliable instruction to licensees regarding residential building contracting and remodeling principles and practices. Continuing education is also intended to ensure that contractors and remodelers provide sound services to their clients. Consequently, the educational setting may not be used as a recruiting, promotion or sales tool for any particular contracting

or remodeling firm or organization. To allow such practices would jeopardize the integrity and purpose of continuing education. In regard to Item D, sponsors, coordinators and instructors must not be allowed to require students to participate in other services or programs offered by that sponsor, coordinator, or instructor. This would clearly be a conflict of interest which would promote self-dealing on the part of sponsors, coordinators, or instructors.

Items E and F under this subpart are important to ensure the integrity of the licensing process. Sponsors, coordinators and instructors must be prohibited from discovering test questions or answers to questions used by the Department to test an applicant's competence to conduct building contractor or remodeler activities in accordance with Minnesota law. Otherwise, there would be no validity in the testing process. Likewise, sponsors, coordinators and instructors must not disseminate any information specifically related to a question or problem appearing on a licensing exam. Just as applicants are restricted from cheating on examinations, educators will not be allowed to engage in activities that promote dishonest conduct or undermine the integrity of the licensing examination.

Subpart 2. Notification of Misconduct. This subpart is designed to assure that the Commissioner is promptly provided with current, pertinent information regarding coordinators and instructors. The subpart requires those approved as education course coordinators and instructors to provide information to the Commissioner regarding significant criminal charges or convictions.

Such charges or convictions may reflect conduct which could require constitute a prohibited practice as defined by Part 2891.0160 of these rules, or otherwise require reconsideration of the commissioner's approval of the coordinator or instructor.

This subpart is necessary to provide the Commissioner with information needed to ensure that coordinators and instructors maintain a high standard of professional conduct and integrity.

Subpart 3. Change in Information in Application. This subpart requires that coordinators and instructors notify the Commissioner within 15 days of any change in the information provided in their applications. This provides a mechanism by which the Commissioner is provided a timely opportunity to review changes to determine whether the coordinator or instructor is still in compliance with the standard for approval.

#### PART 2891.0170 EXTENSIONS

This part recognizes that extenuating medical circumstances can arise which make timely completion of a licensee's continuing education requirement difficult or impossible. The Commissioner is allowed by this part to extend the period within which the requirement must be met by 90 days, or longer if medically indicated, as documented by a physician. The Commissioner must be provided with a request for an extension before the date of license cancellation, along with a physician's statement documenting the medical hardships.

The physician's statement is necessary to verify the existence of the medical condition.

**PART 2891.0180 CANCELLATION OF LICENSE.**

This part requires that a licensee whose license has been canceled for failure to complete continuing education requirements physically surrender the license within 10 days of notice of cancellation. This provision is intended to prevent building contractors or remodelers who have not complied with the law from engaging in such businesses or services. Without this provision, a licensee could continue to do business without penalty.

This part also provides a procedure by which the licensee may be reinstated without the requirement of re-examination within two years of the cancellation. This gives a canceled licensee two years in which to demonstrate that the licensee has obtained the education necessary to provide quality services. This procedure is consistent with that provided for real estate licensees under Part 2800.1300, Subp. 2.

**PART 2891.0190. WAIVERS.**

This part protects the public by requiring that continuing education may not be waived for any licensee, thereby ensuring that all licensees keep their skills up to date. Read in conjunction with Parts 2891.0170 and 2891.0180, this rule also allows the licensee some flexibility by providing for medical hardship extensions and by allowing for reinstatement without re-examination within 2 years of cancellation of a license because of failure to fulfill continuing education requirements.

**PART 2891.0200 FEES.**

This part articulates the basic premise that all information

provided to students regarding fees must be clear and understandable. Likewise, the fees charged must be reasonable in regard to the courses offered. Because the refund process can lead to numerous complaints, this part specifies that under all circumstances fees must be returned promptly after cancellation. To allow students better scheduling options in the case of postponement of a course, the choice of attending the rescheduled course or receiving a tuition refund must be provided.

This part also prevents any confusion that might arise by stating that the sponsor's cancellation policy will control in the event a student cancels registration in a course or is unable to attend.

#### **PART 2891.0210 FACILITIES**

This part assures that classrooms and other locations where courses are offered will provide an atmosphere conducive to learning. It is the intent of these rules that students receive what they pay for, namely a good learning environment. Noisy, poorly ventilated or poorly lighted facilities are considered unacceptable. Sponsors will not be allowed to sacrifice learning opportunities to reduce costs.

#### **PART 2891.0220 SUPPLEMENTARY MATERIALS**

This part ensures that each student has his or her own supply of supplementary materials necessary to learn the material and complete the course.

This ensures that sponsors will not attempt to cut costs by providing inadequate supply of materials or textual materials which

are unreadable.

**PART 2891.0230 ADVERTISING OF COURSES**

Subpart 1. True. This subpart provides a general requirement that all continuing education advertising must be truthful and not deceptive or misleading. Licensees may spend substantial funds on such courses and, must attend the courses to ensure their continued licensure. Accordingly, they must be able to rely on the veracity of the information upon which they base their decisions regarding course attendance.

Subpart 2. Approval statement. This subpart provides guidelines for the advertising of approved courses. The disclosure to be provided to potential students must accurately state that the Commissioner of Commerce has given approval to the course. Prospective students should know whether the course is approved. This subpart also requires that advertising materials contain a statement disclosing that the course has been approved by the Commissioner of Commerce for building contractor or remodeler continuing education credit. This information allows the licensee, who may wish to attend the course, to be fully cognizant of the fact that the course has been approved for credit. Licensees can then choose not to attend a course or pay for a course for which they are going to receive no credit.

Subpart 3. Approved Course Advertisements. This subpart further articulates the general requirement that advertising materials be truthful and not misleading. To assure that students can distinguish accredited courses from those providing no credit

in sponsor advertising, the materials must clearly identify this difference.

Subpart 4 Limitation on Advertising. Brochures and other materials are often printed far in advance of the date of the course and prior to when the courses may be submitted to the Commissioner for approval. This subpart provides a mechanism by which a sponsor may advertise prior to approval being received if, in fact, the course has been submitted to the Commissioner for approval. The term "approval pending" puts the appraiser on notice that checking on the status of the course prior to attending it is the prudent thing to do.

#### PART 2891.0240 NOTICE TO STUDENTS

As an additional measure to assure that students know the number of approved credit hours for each continuing education course they are attending, a specific notice is required to be handed out or read at the beginning of each course stating the number of hours for which the course has been approved. The notice also clarifies that students have the right to make comments about the course offerings to the Commissioner of Commerce.

#### PART 2891.0250 AUDITS

This part allows the Commissioner to audit courses. It is necessary so that the Commissioner may determine compliance with these rules. On occasion the Commissioner may wish to determine compliance without notice so a more accurate picture may be seen. The possibility of an audit, announced or otherwise, places sponsors, coordinators and instructors on notice of the risk of not

complying with the statutes, rules and the disclosures governing education offerings.

**PART 2891.0260 DENIAL OR WITHDRAWAL OF APPROVAL**

To insure the integrity of the contracting or remodeling profession and the educational requirements provided by statute, it is necessary that the Commissioner have the authority to penalize those who violate those statutes and these rules. This subpart expands upon the authority of the Commissioner set forth in Minn. Stat. § 326.91 to deny, suspend, or revoke building contractor or remodeler licenses by providing the same right of action against those approved to train and educate licensees. Likewise, for educators who have demonstrated previous misconduct through violation of the statute or rules, the Commissioner may refuse to approve future course offerings for contractor or remodeler education. This rule is consistent with similar provisions in the continuing education rules for real estate (Part 2800.8600) and appraisers (Part 2808.5400, Subp.1).

**PART 2891.0270 REPORTS TO COMMISSIONER**

To assure that students provide consistent and complete information regarding their education, the Commissioner will prescribe forms to be used by students in supplying this data. Likewise, to reduce the potential for unnecessary reviews by the department, students are limited to submitting these forms until after all required hours have been accomplished.

To facilitate the processing of license renewals, this part requires that continuing education reporting forms be submitted by



March 31 of the year due. Forms submitted prior to March 15 result in the presumption that the continuing education is completed on time.

**PART 2891.0280 CONTINUING EDUCATION COURSE VERIFICATION**

Continuing education course verification must be submitted on forms prescribed by the Commissioner. This ensures that all necessary information is provided and to assist in the expeditious processing of verifications.

## SMALL BUSINESS CONSIDERATION

The Department believes that the overwhelming majority of residential building contractors and remodelers subject to these rules will fall within the definition of a small business. Accordingly, in regard to compliance with Minnesota Statutes Section 14.115, the impact on small business was considered at each and every stage and in regard to every requirement.

The Department was guided in the preparation and drafting of these rules by the Builders Advisory Board, a body which is composed primarily of small business persons in the residential contracting and remodeling industry. In addition, the Department consulted on a regular basis with representatives of the Builders Association of Minnesota regarding the rules. The membership of the Builders Association of Minnesota is composed almost entirely of small businesses.

The Department made the following determination regarding the various items in Minn. Stat. § 14.115, subdivision 2:

(a) The establishment of less stringent compliance requirements for small businesses was considered but decided against because all the requirements are tailored to small businesses.

(b) The establishment of less stringent schedules or deadlines for compliance for small businesses was considered but rejected as unnecessary because the schedules and deadlines were designed specifically for small businesses.

(c) The consolidation or simplification of the compliance or reporting requirements for small business was considered but rejected as unnecessary because the compliance and reporting requirements were written with small businesses in mind.

(d) The establishment of performance standards for small business to replace design or operational standards required in the rule was considered but rejected as unnecessary because the standards were designed for small businesses.

(e) The exemption of small businesses from any and all requirements in the rules was considered but rejected as unnecessary because all of the rules were written with small businesses in mind.

Notice of the fact that these rules would impact on small business was provided in the notice of intent to adopt rules originally published in this matter.

#### ESTIMATED COSTS TO LOCAL PUBLIC BODIES

Minn. Stat. § 14.11 regarding costs to local public bodies in implementing these rules is inapplicable because it is reasonably estimated that no cost will be incurred by local public bodies on account of the implementation of these rules.

**CONCLUSION**

For the reasons set forth above, the commissioner finds these proposed rules to be reasonable and necessary.

Dated: September 20, 1993

A handwritten signature in cursive script, reading "James E. Ulland". The signature is written in dark ink and is positioned above a horizontal line.

James E. Ulland  
Commissioner of Commerce