

Minnesota Board of Electricity

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Governing Licensing of Electricians, Power Limited Technicians, and Contractors, Minnesota Rules Chapter 3800.

INTRODUCTION

Chapter 328 of the 2002 Session Laws (Chapter 328) and Chapter 58 of the 2003 Session Laws (Chapter 58) included significant changes to the Minnesota Statutes, Sections 326.01 and 326.241 to 248 (Minnesota Electrical Act) which requires the Minnesota Board of Electricity (Board) to amend Minnesota Rules Chapter 3800 (Chapter 3800) to correlate with these changes. Section 12 of Chapter 328 includes a requirement that the Board may initially set experience requirements for a power limited technician applicant without rulemaking, but must adopt rules before July 1, 2003, which was amended by Chapter 58 to be July 1, 2004. In addition to the requirement to set power limited technician applicant experience requirements, the Board recognizes a number of other parts of Chapter 3800 that are also impacted by changes to the Minnesota Electrical Act created by Chapters 328 and 58, making it necessary that these parts also be amended. The Board is also proposing amendment to other parts of Chapter 3800 to correlate with other current law or recognized need.

On June 24, 2002, the Board published a Request for Comments in the State Register and included the notice in the Board's newsletter, which is mailed to all entities licensed by the Board and others requesting to be on the Board's rulemaking mailing list. In addition, the Request for Comments was posted on the Board's website. This notice included the Board's intent to appoint an advisory task force (ATF) to assist Board staff in drafting specific rule language. The Board received a response from thirteen individuals expressing interest in serving on the ATF and subsequently appointed each of the respondents. The membership of the ATF included persons representing companies licensed as alarm and communication contractors, technology system contractors, and electrical contractors as well as one legislative lobbyist and one person licensed as a journeyman and master electrician. After three separate meetings totaling fifteen hours, the ATF developed a set of proposed rules and amendments and presented them to the full Board for consideration and inclusion in the proposed amendments to Chapter 3800.

On January 5, 2004, the Board published a second Request for Comments in the State Register and included the notice in the Board's newsletter, which is mailed to all entities licensed by the Board and others requesting to be on the Board's rulemaking mailing list. In addition, the Request for Comments was posted on the Board's website. The Board received comments from 2 persons and 1 request for clarification of intent in response to the January 5, 2004 Request for Comments.

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact John A. Schultz at Board of Electricity, Griggs-Midway Building, Suite S-128, 1821 University Avenue, Saint Paul, MN 55104, telephone (651) 642-0800, facsimile (651) 642-0441. TTY users may call (800) 627-3529.

STATUTORY AUTHORITY

The Board's general statutory authority to adopt the rules is set forth in Minnesota Statutes section 326.241, subdivision 2 (6), which provides: "The Board, or the complaint committee on behalf of the Board where authorized by law, shall have the power to: (6) Adopt reasonable rules to carry out its duties under sections 326.241 to 326.248 and to provide for the amount and collection of fees for inspection and other services. All rules shall be adopted in accordance with chapter 14." This authority was most recently established by the legislature in 1967, and is not subject to the provisions of Minnesota Statutes, section 14.125. Under these statutes, the Board has the necessary statutory authority to adopt the proposed rules. Chapter 328 of the 2002 Session Laws also requires the Board to adopt rules related to experience requirements for a power limited technician license applicant by July 1, 2003, amended by Chapter 58 to July 1, 2004.

REGULATORY ANALYSIS

"(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule"

The classes of entities or persons affected by the proposed rules include applicants for, and holders of, personal and contractor licenses administered by the Board, employers registered with the Board, technical colleges and technical college students.

Because the proposed rules are amendments to, or parallel with, existing rules, there are minimal new requirements and therefore limited additional costs to affected entities.

The proposed rules provide additional clarity to existing rules, enabling affected entities to better understand requirements.

“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”

Because the proposed rules are primarily amendments to, or parallel with, existing rules, there are minimal costs associated with implementation and enforcement of the proposed rules. There are no anticipated effects on state revenues.

“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”

The proposed rules do not include any additional compliance requirements that would result in significant cost or additional effort on the part of affected entities.

“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”

Because of the minimum basic requirements set forth in the proposed rule, there were no alternative methods identified.

“(5) the probable costs of complying with the proposed rule”

The proposed rules do not directly require affected entities to incur additional costs.

“(6) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”

There are no federal regulations that are applicable.

PERFORMANCE-BASED RULES

The proposed rules are basic administrative requirements and procedures and therefore performance-based criteria is not applicable.

ADDITIONAL NOTICE

The Board will mail the rules and Notice of Intent to Adopt to every entity who has requested to be on the board's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. The Board will also give notice to the Legislature per Minnesota Statutes, section 14.116. The notice of intent to adopt will be published in the Board's summer newsletter, which is mailed to every entity licensed by the Board. The mailing of the newsletter will be scheduled to coincide with publication of the notice of intent to adopt in the State Register. In addition, the notice will be mailed to all employers registered with the Board in accordance with Minnesota Rules 3800.3550 and all technical colleges with programs approved by the Board in accordance with Minnesota Rules 3800.3820 to .3870. Additionally, the Board will place the notice on its web site. The Board's Notice Plan also includes giving notice required by statute by publishing the notice in the State Register.

LIST OF WITNESSES

No hearing is scheduled

RULE-BY-RULE ANALYSIS

Throughout Chapter 3800: Delete "electrical" as the modifier of "contractor" when the term "contractor" applies to all types of contractors licensed by the Board. "Contractor" is defined in Minnesota Statutes Section 326.01, subdivision 5 and includes any entity, regardless of type of electrical work engaged in, that is licensed by the Board under Section 326.242. Delete "alarm and communication contractor" and related language because it is no longer applicable.

3800.3500 Definitions.

Amend Subpart 1, "words, terms, and phrases" by replacing "parts 3800.3500 to 3800.3910" with "Minnesota Rules Chapter 3800" to eliminate the need to amend this part as additional parts are added to Chapter 3800.

Amend Subpart 11 "personal on-the-job supervision and job" by deleting "A licensed person shall supervise no more than two unlicensed persons" to correlate with Minnesota Statutes, Section 326.242, subdivision 5. Deleting this sentence correlates this subpart with Section 326.242, subdivision 5.

3800.3520 Examination; Minimum Experience Requirements for Licensure; Experience Acceptable to the Board.

Subpart 3. Maximum allowable credit under certain conditions.

Amend to correlate with Minnesota Statutes, Section 326.242, subdivision 3d by allowing practical experience credit during the time period when an applicant for a power limited technician license acquires Board approved technical training offered on a part-time or night-school basis.

Subpart 5. Schedule of minimum experience requirements and maximum experience allowances.

Amend the experience categories in Items A through H by deleting (8) laying out and installing wiring, apparatus, and equipment for home appliances. This category dates back to the early 1950's and is considered obsolete. The category applies to work performed by Class A installers. There are currently two persons that hold a Class A installer license, and based on inspection activity, neither has been active since 2000.

Amend the "electronic control" experience category in Items A through H to become "technology circuits and systems" to correlate with the definition of "technology circuits and systems" in Section 326.01, subdivision 6l, which was created by Chapter 328. The term "electronic control" was not previously defined and was therefore problematic in its application.

Amend the experience categories in Items A through H to include "process control circuits or systems" to correlate with the definition of "process control circuits or systems" in Section 326.01, subdivision 6m. This definition was created by Chapter 328 and is included as a separate experience category to both recognize and limit experience for this specific type of electrical work. Because of its limited application, it is not reasonable for experience in this type of electrical work to fully qualify an applicant for any particular license examination.

Amend Item B(5) by changing minimum experience required for maintenance work from one month to zero months. The experience requirements for a Class A journeyman electrician require a minimum of 24 months experience wiring for and installing electrical wiring and up to 24 months of experience maintaining and repairing electrical wiring. Because the process of wiring for and installing electrical wiring inherently includes some maintaining and repairing, the Board believes it is unnecessary to include the minimum one-month maintaining and repairing experience requirement. In addition, most verification of experience forms returned by applicants' employers do not include any experience notation in the maintaining and repairing category. In processing applications for applicants in this license category, Board practice has been to recognize maintaining and repairing work that is inherent to wiring for and installing electrical wiring and making this change simply reflects longstanding Board practice.

Add new Item I, experience requirements for a power limited technician applicant. Section 326.242, subdivision 3d identifies one of the qualifying criteria for a power limited technician to include 36 months of practical experience. Although focused on technology circuit and system work, the format of experience criteria for a power limited technician applicant is similar to that of other license type applicants. Because there is only one personal license class specific to technology circuits and systems and a licensed power limited technician may be the responsible licensed person for a contractor or employer as well as being a licensed employee of the contractor or employer, it is both necessary and reasonable that the allowed experience for a power limited technician applicant includes experience credit for planning, laying out, and

supervising, in addition to installing and repairing technology circuits and systems. This allowance is different than identified for classes of work that includes both a master level and journeyman or constructor level of licensure. In these license types, experience credit for planning, laying out, and supervising is only allowed for the master level license applicants. Because the power limited technician license relates directly to the installation of technology circuits and systems, the minimum experience requirement of 12 months for the wiring for and installation of technology circuits and systems is also deemed necessary and reasonable. Experience credit for wiring and maintaining process control circuits or systems is limited to six months because, even though the circuits may be similar to technology circuits and systems, it is not within the scope of technology circuits and systems. No experience credit is allowed for line work or installing elevators because the work is completely outside the definition of technology circuits and systems.

3800.3530 Requirements for Securing and Maintaining an Electrical Contractor's License. Amend existing rules to be consistent with current terms and more properly address intent.

Include reference to Minnesota Statutes Section 270.72, Tax Clearance, to clearly identify to applicants that compliance with this section is required for all contractor license applicants.

Amend to require evidence of compliance with state business filing and registration requirements. The Board's experience has been that many companies either are not aware of business filing and registration requirements or have failed to comply. Requiring evidence of compliance as a condition of licensure assures that companies licensed by the Board are in compliance with applicable business law.

Amend to require an affidavit when applicants claim exemption from worker's compensation insurance requirements or when not required to obtain a Minnesota identification number. The affidavit will provide clear statement by the applicant that they meet certain conditions that subsequently don't require the applicant to provide the necessary policy or identification numbers.

3800.3540 Designation of Responsible Master Electrician on Contractor's License Application. Amend existing rules to be consistent with current terms and more properly address intent.

Amend to include power limited technician. This change recognizes the changes to section 326.242 where a power limited technician may be the responsible licensed person for a contractor's license.

Amend to address a situation when the responsible licensed person is terminated or terminates employment, including specific requirements for the employer and the employee. This part is amended to better reflect reasonable and practical action when the responsible licensed person position for a contractor's license is vacated, regardless of reason. The proposed language strikes a balance between situations that involve voluntary and involuntary separation or termination of the responsible licensed person, while providing specific effect on the contractor's license if a replacement responsible licensed person is not acquired in a reasonable time frame.

Amend to address a situation when the responsible licensed person fails to renew or maintain their license. This part addresses the absence of a properly licensed-responsible license person in a similar manner as when the responsible licensed person is separated or terminated. This new part clearly identifies necessary action required for the contractor to maintain the contractor's license as well as clear consequence if action is not taken.

Amend to clarify that the owner or principal of the company, as well as the responsible licensed person for the company, are responsible for compliance with Chapter 3800 and the Minnesota Electrical Act.

Amend to include a definition of "employer" that applies to this part. The term "employer" is used in various contexts throughout the Minnesota Electrical Act and Chapter 3800. The definition included in this part is parallel to the term as used in section 326.242, subdivision 12 and applies in a similar manner to this part.

3800.3550 Designation of Responsible Master Electrician, Licensed Maintenance Electrician, or Electrical Engineer by an Employer.

Amend to include power limited technician. This change recognizes the changes to section 326.242 where a power limited technician may be the responsible licensed person for an employer.

Amend to require resubmittal of certificate of responsible licensed person on regular interval. Although current rules require the responsible licensed person for an employer to notify the Board when their responsibility is terminated, this notification is not always done. As a result, employers may be operating in violation of the Minnesota Electrical Act and Chapter 3800. Requiring employers to resubmit this certificate of responsible licensed person on a two-year cycle enables the Board to do a better job of ensuring compliance. Employers are not charged a fee for submitting a certificate of responsible licensed person and the Board will initiate the resubmittal.

Amend to include a definition of "employer" that applies to this part. The term "employer" is used in various contexts throughout the Minnesota Electrical Act and Chapter 3800. The definition included in this part is parallel to the term as used in section 326.242, subdivision 12 and applies in a similar manner to this part.

3800.3570 Marking of Contractor's Vehicles. Amend to require contractor's license number in addition to contractor's name on vehicles.

Although current language requires the name of the contractor on vehicles used in the performance of electrical work, an increasing number of contractor names do not evince that electrical work is part of the business they are engaged in. As an example, an increasing number of companies whose primary business is not performing electrical work have become licensed as technology system contractors. Providing the contractor license number on vehicles gives clear evidence to electrical inspectors and agents of the Board that these companies are licensed. In addition, the class of license held is also identified, which corresponds to the scope of work that is allowed to be performed by the contractor's workers, thereby enabling efficient and effective enforcement of licensing laws.

3800.3580 Revocation of Any License. Amend to include provisions of Minnesota Statutes Sections 268.0625, 270.72, and 518.551 as conditions for revocation, suspension, or refusal to renew any license.

Including this language clarifies to license holders that licenses may be revoked, suspended, or refused to be renewed for reasons other than failure to comply with the Minnesota Electrical Act and Chapter 3800.

3800.3590 Licenses; Expiration and Fees. Amend to reflect addition of license types and deletion of alarm and communication license.

The terms of various license types administered by the Board are clarified. Except for the addition of power limited technician and technology system contractor licenses and the deletion of alarm and communication license, there is no change in this part.

3800.3601 Definitions. Amend by adding power limited technician and clarifying that "electrician license" does not include a lineman license issued by the Board.

There are a limited number of lineman licenses issued by the Board. The lineman license is not a required license and therefore continuing education is not deemed necessary. The lineman license category was requested by electrical utilities and continuing education is generally provided by the utilities. All of the other license types administered by the Board relate to knowledge of the National Electrical Code, whereas the lineman license relates to the National Electrical Safety Code. Additionally, work that utilities and linemen perform is generally exempt from licensing and inspection requirements of the Minnesota Electrical Act.

3800.3602 Requirements for Renewal of Electrician License. Amend by adding power limited technician and clarifying instruction requirements for specific license types.

Except for the power limited technician license type, which requires 8 hours of continuing education credit, all other license types administered by the Board, except for the lineman license, require 16 hours of continuing education credit as a condition of renewal of the license. The 8-hour requirement for power limited technicians is established in section 326.242, subdivision 3d. Because the typical knowledge areas related to technology circuit and system work performed by power limited technicians are more technical based than code based, only one-fourth of the required credits is required to be on the National Electrical Code compared to the three-fourths required for other license types. Knowledge areas typically related to the other license types administered by the Board are more code related and less technical related and therefore the inverse ratio is deemed appropriate.

3800.3603 Credit for Instruction. Amend by adding expiration of approval for programs and allowing presentation of interactive programs through electronic media under specific circumstances and expiration of program approval.

The Minnesota Board of Electricity is a member of the multi-state reciprocal licensing group that includes 10 other states, many of whom recognize continuing education programs that are provided through interactive media. Current rules related to continuing education allow credit to be granted for completion of continuing education programs approved by other states with similar licensing requirements. Amending this part to allow continuing education credits to be obtained through interactive media allows for more diverse instruction and options for the license holder to meet their continuing education requirements.

Approval of continuing education programs is also amended to expire three years from initial approval. This is necessary to maintain an up-to-date database of approved and active programs. Most continuing education programs are based on the National Electrical Code, which is updated on a three-year cycle. For this reason alone, it is reasonable to have continuing education programs approved on a similar three-year cycle. Technical topics also become dated over time and it is subsequently necessary for programs to be reviewed, updated, and resubmitted for approval.

3800.3690 Disconnection of Uncompleted or Uninspected Installations. Amend to correlate with 3800.3780.

When Part 3800.3780 was amended to change the expiration of request for inspection certificates from 18 months to 12 months, the similar change in Part 3800.3690 was inadvertently not made. This change corrects this oversight.

3800.3831 Power Limited Technician Program. Adopt general description of power limited technician program.

Section 326.242, subdivision 3d allows for up to 12 months credit for the completion of Board approved technical training. Part 3800.3831 establishes a minimum program length of 500 hours to be considered for experience credit towards that required for a power limited technician license applicant. Experience credit under this part for programs that are administered on a part-time or night-school format can be approved in addition to the practical experience gained during the same time period as allowed by part 3800.3520, subpart 3(E). The minimum program length of 500 hours is considered minimal to adequately address the technical content areas identified in part 3800.3880.

3800.3880 Power Limited Technical Program Content. Adopt requirements for power limited technical program content.

This part establishes program instruction contact time at a minimum of 500 hours, as well as setting parameters for independent study, technical instruction, non-technical instruction, lecture and lab time, and attendance. General knowledge and skill areas are also identified to ensure that approved program content is well rounded and persons completing these programs meet entry level knowledge and skill levels. Although specific provisions of this part are extensive, they are not overly prescriptive, thereby allowing individual programs to be tailored to meet local and regional needs while maintaining a reasonable degree of equity between programs.

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3800.3885 Qualifications of Instructors for Power Limited Technical Program. Adopt qualifications for instructors for power limited technical programs.

This part identifies minimal qualifications for instructors of approved programs, including requirements for recent initial experience. These requirements ensure that instructors have the knowledge and experience that is current with the industry.

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

May 14, 2004

John A. Schultz
Executive Secretary
Minnesota Board of Electricity