

December 21, 2011

Legislative Reference Library
645 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Rules of the Plumbing Board about the Proposed Amendment to Rules or New Rules Regulating Plumber Licensing, Certification and Registration, and Continuing Education, *Minnesota Rules*, Chapter 4716; Governor's Tracking #AR 1035

Dear Librarian:

The Minnesota Plumbing Board intends to adopt rules regulating plumber licensing, certification and registration, and continuing education. We plan to publish a Dual Notice of Intent to Adopt Rules without a Public Hearing in the December 27, 2011 *State Register*.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at (651) 284-5006.

Yours very truly,

Carrie

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Minnesota Plumbing Board

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules and New Rules Regulating Plumber Licensing, Certification and Registration, and Continuing Education, *Minnesota Rules*, Chapter 4716.

INTRODUCTION

The Minnesota Plumbing Board (the "Board") intends to adopt rules regulating the licensure or registration of plumbing and water conditioning contractors and installers and other persons engaged in or working at the business of plumbing and water conditioning installation or service; certification for persons engaged in medical gas system installation, maintenance, or repair; continuing education for individuals licensed as master plumbers, journeyman plumbers, restricted master plumbers, restricted journeyman plumbers, water conditioning masters and journeymen; and other necessary amendments for clarity or editorial corrections, or to coordinate the rules with other licensing related rule chapters or the Minnesota Building Code, and to address laws passed during any regular or special legislative sessions in 2010 or 2011.

The Board published two requests for comments related to these proposed rules. First, on September 7, 2010, the Board sought comments on these proposed rules, and to update the Plumbing Code. The Board later determined that modifications to the Code and chapter 4716 should be separate rulemakings because it was likely that updates to the two chapters would proceed with different timelines because of licensing related rulemaking authorities that were passed during the 2010 and 2011 legislative sessions. So, on August 1, 2011, the Board published a request for comments related to the rules as proposed.

ALTERNATIVE FORMAT

Upon request, this information can be made available in an alternative format, such as large print, Braille, or audio. To make a request, contact Carrie Rohling: MN Plumbing Board, c/o Department of Labor and Industry, 443 Lafayette Road North, Saint Paul, MN 55155, (651) 284-5006, FAX (651) 284-5725, e-mail dli.cclboards@state.mn.us. TTY users may call the Board through the Department of Labor and Industry at (651) 297-4198.

STATUTORY AUTHORITY

Water Conditioning and Medical Gas Systems

When the Board was first created in 2007, Minn. Stat. § 326B.435, subd. 2, clause 5, authorized the Board to make rules to regulate plumbing contractors, journeymen, apprentices, master plumbers, restricted master plumbers, and restricted journeymen and other persons engaged in the design, installation, and alteration of plumbing systems, except for architects and professional engineers licensed pursuant to Minn. Stat. § 326.02, subd. 2-3.¹ This rulemaking

¹ 2007 Minn. Laws, Chapter 140, Article 4, Section 5; Minn. Stat. § 326.3705, which was renumbered as 326B.435

authority has been used since it was enacted, but several amendments have been made to clause 5 that add new subject matter.

Currently, Minn. Stat. § 326B.435, subd. 2, clause 5, states:

(5) adopt rules that regulate the licensure, certification, or registration of plumbing contractors, journeymen, unlicensed individuals, master plumbers, restricted master plumbers, restricted journeymen, restricted plumbing contractors, backflow prevention rebuilders and testers, water conditioning contractors, and water conditioning installers, and other persons engaged in the design, installation, and alteration of plumbing systems or engaged in or working at the business of water conditioning installation or service, or engaged in or working at the business of medical gas system installation, maintenance, or repair, except for those individuals licensed under section 326.02, subdivisions 2 and 3. The board shall adopt these rules pursuant to chapter 14 and as provided in subdivision 6, paragraphs (e) and (f).²

Effective August 1, 2010, the Legislature added rulemaking authority related to water conditioning contractors, water conditioning installers and other persons engaged in or working at the business of water conditioning installation or service.¹ The Legislature also enacted Minn. Stat. § 326B.438, which relates to medical gas installation, maintenance, and repair, and licensure and certification.ⁱⁱ Then, during the 2011 special session, amendment to §326B.435 added the licensure and certification of persons engaged in or working at the business of medical gas installation, maintenance, or repair.ⁱⁱⁱ This legislation became effective on July 1, 2011, and requires persons performing or offering to perform the installation, maintenance, or repair of medical gas systems to obtain a contractor license, and prohibits individuals from engaging in the installation, maintenance, or repair of a medical gas system unless they are licensed as a master or journeyman plumber and are certificated by the Commissioner as medical gas system installer.^{iv} The legislation also included a clause to permit individuals that have a current “certified installer” certification on August 1, 2010, to be exempt from the requirement for medical gas installers to be licensed as a master or journeyman plumber.

Continuing Education

Enacted in 2010, the Board’s authority to adopt rules regulating continuing education for individuals licensed as master plumbers, journeyman plumbers, restricted master plumbers, restricted journeyman plumbers, water conditioning contractors, and water conditioning installers, is in Minn. Stat. § 326B.435, subd. 2, clause 6.³ Then, effective July 1, 2011, continuing education for individuals certified under Minn. Stat. § 326B.438 (medical gas) was added.⁴

The Board has already used its “existing” rulemaking authorities. Legislative amendments during the 2010 and 2011 sessions have directed the Board to adopt rules in new and specific

by 2008 Minn. Laws, Section 21.

² See, 1st Special Session 2011 Minn. Laws, Chapter 4, Article 3, Section 14.

³ See, 2010 Minn. Laws, Ch. 183, Sec. 6.

⁴ See, 1Sp. 2011 Minn. Laws, Ch. 4, Art. 3, Sec. 14.

subject matters. The “oldest” of these new authorities became effective on August 1, 2010. Because the Board has published its notice of intent to adopt within 18 months of the effective date of the laws authorizing rules about the new subject matters, Minn. Stat. § 14.125 does not apply.

Repeal of Plumbing Code Rules

Pursuant Minn. Stat. § 326B.435, subd 3, the Board has the authority to adopt the Plumbing Code that must be followed in this state and any amendments thereto. This rulemaking will repeal parts 4715.5800 and 4715.6000 because the requirements have either been superseded by the water conditioning statutes or added as new language in these proposed rules. Further explanation is provided in the rule-by-rule analysis section.

Under these statutes, the Board has the necessary statutory authority to adopt the proposed rules.

REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out seven factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (7) below restate these factors and then give the Board’s response.

(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:

Those who probably will be affected by the proposed rule, who will bear the costs of the proposed rule, and who will benefit from the proposed rule include: Plumbing contractors, journeymen, apprentices, master plumbers, restricted master plumbers, restricted journeymen, plumber’s apprentices, water conditioning contractors and installers, employers of individuals who perform plumbing and water work, persons who wish to perform plumbing work, persons engaged in or working at the business of water conditioning installation or service, persons interested in becoming certified to install, maintain, or repair medical gas systems, plumbing inspectors, building officials, engineers, residential and commercial building contractors and owners, and the public.

(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 Board only adopts the plumbing code and plumbing licensing rules and does not administer those rules, the Board will not incur any costs associated with the implementation of the proposed rules. The Board does not anticipate that the adoption of the proposed rule will affect state revenues. For more discussion of the probable costs to the Department of Labor and Industry for the implementation and enforcement of these proposed rules see item (5) of this section.

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

Because the legislature directed the Board to adopt rules on the subject matter of this rulemaking, there are no less costly methods or less intrusive methods for achieving the purpose of the proposed rules.

(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:

No other methods were considered for achieving the purpose of the proposed rule.

(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals:

There are negligible costs to the Board for complying with the proposed rules in that the Board's authority is rulemaking and not implementation, administration, or enforcement. However, there are likely to be probable costs associated with the statutory requirement for plumbing related licensure, certification or registration, and related continuing education requirements by the Department of Labor and Industry. The Department's continuing education program itself will have costs associated with administration of the program and course approvals. Costs of the DLI will be passed to licensees in the form of fees. The marketplace will not be required to react because entities already operate continuing education programs for the plumbing industry.

The probable costs of compliance for individuals is dependent on the number of hours required and the costs imposed by entities offering continuing education. A November 20, 2011 Internet search of plumbing related continuing education opportunities show that the cost per hour is as low as \$10.⁵

(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals:

If the Board does not follow the directives of the Legislature in adopting these rules, the rulemaking authorities will be lost. If the rules are not adopted, the minimum standards for licensure, certification, or registration of water conditioning contractors, water conditioning installers, medical gas system contractors, and medical gas system installers will not be set, and those that want to provide those services will not know what qualifications they must have to obtain the requisite license, certification, or registration. Further, the public who wishes to obtain these services will have no mechanism to verify that a contractor or individual has satisfied the minimum competencies necessary to the proper installation, maintenance, or repair of water conditioning or medical gas systems.

Further, the consequences of not adopting the rules are the potential adverse health or safety

⁵ ClickCE, LLC, offers courses at \$10 per credit hour. See, <http://www.clickce.com/minnesota-plumbing-p-1920.html>. The 2011 Annual Building Official Institute, offered by the University of Minnesota, College of Continuing Education, offered three days of plumbing related continuing education at \$15 per credit hour. See, http://mnhousingcodeofficials.org/pdf/2011_AIBO_Brochure.pdf.

impacts for unqualified or unknowledgeable installers.

(7) 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 applicable federal regulations that address the licensure, certification, or registration of plumbers, water conditioning contractors and water conditioning installers, and other persons engaged in or working at the business of water conditioning installation or service, or engaged in or working at the business of medical gas system installation, maintenance, or repair

PERFORMANCE-BASED RULES

The Board carefully considered the directives of the legislature. The Board sought the input of interested parties by publishing two requests for comments and public participation during board meetings. These proposed rules are prescriptive in that they establish the required number of practical experience required prior to examination for water conditioning masters and journeymen, and the number of continuing education hours required for renewal. Where the proposed rules are not prescriptive they are performance based in that individuals licensed, certified, or registered in the plumbing industry will continue to receive education related to plumbing methods and technologies.

ADDITIONAL NOTICE

As part of its regular business, the Board receives and considers input from interested parties during its meetings. In addition to obtaining ongoing input from interested parties, our Additional Notice Plan includes mailing or e-mailing the Dual Notice to trade associations involved in plumbing and building construction. Those associations are as follows:

- a. Associated Builders and Contractors
- b. Local chapter of the Association of Minnesota Building Officials (AMBO)
- c. Minnesota Mechanical Contractors Association
- d. Association of General Contractors of Minnesota
- e. Builders Association of Minnesota (BAM)
- f. Builders Association of the Twin Cities
- g. Minnesota State Fire Chiefs Association
- h. Minnesota Plumbing, Heating and Cooling Contractors Association
- i. American Society of Plumbing Engineers – Minnesota Chapter
- j. American Society of Civil Engineers – Minnesota Section
- k. Association of Minnesota Counties
- l. Building Owners and Managers (BOMA), Minneapolis
- m. Building Owners and Managers (BOMA), St. Paul
- n. League of Minnesota Cities
- o. American Council of Engineering Companies of Minnesota
- p. Minnesota Pipe Trades Association
- q. Minnesota State Fire Marshal Division

- r. Minnesota Association of Townships
- s. Metropolitan Council

The Board will also post the proposed rules, the Statement of Need and Reasonableness, and Dual Notice of Intent to Adopt Rules on the Board's webpage on the Department of Labor and Industry's ("DLI") website at <http://www.dli.mn.gov/PDF/docket/4716docket.pdf>.

Our Notice Plan also includes giving notice required by statute. We will mail or e-mail the Dual Notice of Intent to Adopt Rules to everyone who has registered to be on the Board's and the Department of Labor and Industry's plumbing rulemaking mailing lists under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 14.116.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Board has consulted with Minnesota Management and Budget (MMB). The Board did this by sending MMB copies of the documents that were sent to the Governor's Office for review and approval on the same day we sent them to the Governor's office. The documents included: the Governor's Office Proposed Rule and SONAR Form; the almost final draft rules; and almost final SONAR. MMB had not commented before this Statement of Need and Reasonableness was finalized.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the Board has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Board determined that a local government will not be required to adopt or amend an ordinance or other regulation to comply with these proposed rules because on August 1, 2011, the Board specifically requested that local units of governments provide information if it believed that a possible amendment of the plumber licensing rules might require the adoption or amendment of an ordinance or other regulation. The Board did not receive any comments or information from local units of government.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by Minnesota Statutes, section 14.127, the Board has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Board has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city. The Board has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis section of this SONAR on pages 3-5. The probable costs are expected to be minimal and will not exceed \$25,000 for any small business or small city during the first year after the rules take effect.

LIST OF WITNESSES

If these rules go to a public hearing, the Board anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

1. Mr. John Parezik, Chair, Minnesota Plumbing Board, will testify about the Board's interest in amending the Plumbing Code.
2. Mr. Jim Lungstrom, Assistant Director of CCLD and Commissioner's designee to the Board, will testify about the technical aspects of the proposed amendments.
3. Mr. Kevin Wilkins, Supervisor of CCLD's licensing unit, will testify about portions of proposed rule part 4716.0092, subp. 1 and 4.
4. Other Board members or Department of Labor and Industry staff, if necessary.

RULE-BY-RULE ANALYSIS

4716.0100 DEFINITIONS.

The proposed rule adds three subparts to define words that are used throughout the proposed rules so that users clearly understand their definitions. The new definitions are:

- a) "Department" means the Department of Labor and Industry;
- b) "Person" means any individual, limited liability company, corporation, partnership, incorporated or unincorporated association, sole proprietorship, joint stock company, or any other legal or commercial entity. This is needed to create a distinction between the person and an individual; and
- c) "Plumbing code" means the code adopted as Minnesota Rules, chapter 4715.

Including definitions is needed so that everyone understands what specific words mean. The definitions proposed are reasonable because they provide clarity to all users to enhance the user's understanding of the chapter.

Medical Gas

4716.0070 AUTHORITY; PURPOSE.

This rule is a general statement about the statutory authority for rules related to the licensure and certification of persons performing or offering to perform the installation, maintenance, or repair of medical gas systems, which is needed and reasonable because the information provides context for the rules that pertain to medical gas

4716.0071 DEFINITIONS.

This rule contains definitions that are specific to medical gas. Definitions are needed so that users clearly understand how the Board defines terms. The proposed definitions are reasonable because a clear understanding of the meaning will allow for improved compliance and easier enforcement.

Subpart 1. **Scope.** This subpart specifies that the definitions contained in this part, and two parts

of the Plumbing Code, apply to the licensing rule (4716.0072). Part 4715.0100 brings in general definitions of the chapter, and part 4715.0420, subp. 2, brings in common abbreviations. Including these definitions is important to create and ensure consistency in how specific words are used.

Subp. 2. Breaching. A definition for “breaching” is needed to ensure consistent enforcement and use of the term. The term is used in 4716.0071 and requires proper certification when working on medical gas systems when any portion of the system is opened to the atmosphere and contamination to the system may occur. The chance of system exposure to contaminants will be greatly reduced when this work is performed by qualified individuals.

Subp. 3. Installation. This definition is needed to ensure consistent enforcement and use of the term. Defining the term establishes when proper certification is needed.

Subp. 4. Maintenance. This definition is needed to ensure consistent enforcement and use. The term is used to define work which requires the person performing such work to be properly licensed or certified in accordance with part 4716.0072. When a medical gas system is opened and exposed to contaminants it is the intent to have licensed and certified individuals perform this work. This amendment also describes work not included under the definition and is routinely performed by staff of the facility containing the medical gas system. Tasks described in ASSE Standard 6040, Medical Gas Systems Maintenance Personnel would not require the individual to be licensed and certified under this rule.

Subp. 5. Certified installer. This definition is needed to ensure consistent enforcement and use of the term. The intent is to define the requirements which must be met by an individual prior to application for certification by the Commissioner. A certified installer will have completed a minimum 32 hour training course covering all facets of ASSE 6010 including a practical and written exam. The course will be conducted by a Medical Gas Systems Instructor certified to ASSE 6050 and the exams proctored by an individual other than the instructor. Brazing qualifications will be to either Section IX, Welding and Brazing Qualifications, of the ASME Boiler and Pressure Vessel Code, or AWS B2.2, Standard for Brazing Procedure and Performance Qualification, which are both modified in NFPA 99. Certification to ASSE 6010 must be through NITC which is a nationally recognized testing agency specializing in medical gas or an approved agency as described in 4716.0071, subp. 6.

Subp. 6. Recognized third party certification agency. This definition is needed to ensure consistent enforcement and use of the term. The term defines the criteria an agency must meet for approval by the Commissioner. The intent is also for the certification agency to maintain records verifying the certified installer is current to the required certification and standard when submitting application for certification by the Commissioner or renewal of the certification.

Subp. 7. Repair. This definition is needed to ensure consistent enforcement and use of the term. The term is used in 4716.0070 and requires the individual to be properly certified when performing this type of work. The term is used to define work which requires the person performing such work to be properly licensed or certified in accordance with part 4716.0072.

4716.0072 LICENSURE; CERTIFICATION.

This rule is about the requirement for licensure as a medical gas contractor and certification as a medical gas installer. This rule is needed so that persons that desire to offering or perform medical gas services understand the minimum requirements that must be met prior to licensure or certification, and the application and renewal process. The rule is reasonable because it mimics the statutory requirements and informs persons engaging in the business of medical gas of the plumbing contractor licensing requirements. This rule also informs the individuals performing the work of the requirements which must be met and followed to obtain and maintain certification.

Subpart 1. Licensure requirement. This subpart restates the statutory requirement that persons offering to perform or performing medical gas installations, maintenance, or repair, need to be licensed plumbing contractors. The rule clearly states that the contractor must designate an individual that is a medical gas installer certified by the commissioner as the individual responsible for compliance with the medical gas statute, the Plumbing Code, and this rule.

Subp. 2. Certification requirement. This subpart is broken down into two pieces to address the requirements that must be met prior to application, and to clearly state that meeting the requirements must be ongoing for the duration of the certification period.

The two ways to meet the requirements for certification are contained in paragraph (a). First, the enabling statute exempted individuals that possessed a valid certificate meeting the requirements of ASSE 6010 on August 1, 2010, and are a qualified brazer in accordance with the provisions required in NFPA 99C from the requirement that they also be a licensed master or journeyman plumber. If an individual does not meet the requirements of the exemption, the second way to be eligible for certification is to possess a valid certificate meeting the requirements of ASSE 6010 and as a qualified brazer in accordance with the provisions required in NFPA 99C *and* be a licensed master or journeyman plumber.

Paragraph (b) clearly states that individuals that are certified by the commissioner as a medical gas installer must maintain their status as a certified installer and carry verification while in the field. An individual meeting the exempt status in statute must also carry verification that they were certified on August 1, 2010.

Subp. 3. Applications. The subpart specifies that applications must be submitted on a form approved by the Commissioner and include the fees required by chapter 326B.

Subp. 4. Renewal and expirations. This subpart specified that the medical gas installer certificate expires and is renewed in accordance with Minn. Stat. § 326B.438, subd. 2 and 4.

Water Conditioning

4716.0090 AUTHORITY; PURPOSE.

This rule identifies that the purpose of 4716.0092 is to establish the licensing requirements for water conditioning contractors, water conditioning masters, and water conditioning journeymen,

and other persons engaged in or working at the business of water conditioning installation of service. The rule is needed and reasonable in that it provides context for rules related to water conditioning.

4716.0091 DEFINITIONS.

This part applies the definitions from § 326B.50, which contains the statutory definitions related to water conditioning, and part 4715.0100, which are the general definitions from the Plumbing Code. Definitions are needed so that all users understand how specific words are defined. It is reasonable to include definitions because understanding the meaning of words improves compliance and enforcement.

4716.0092 LICENSURE.

This part contains the requirements for licensure; experience and examination; and renewal and expiration under the new statutory framework. Historically, there has been a water conditioning contractor and a water conditioning installer. These licenses were granted to individuals. Under the new statutory framework the contractor license is a business license, and that master and journeyman licenses are issued to individuals. With that in mind, the requirements of two rules from the Plumbing Code (Minn. R. Parts 4715.5800 and 4715.6000) are added to this rule as proposed. This rule is needed so that the persons engaged in the business of water conditioning understand the contractor licensing requirement, and the individuals performing the work are aware of and can prepare to meet the minimum requirements for a water conditioning master or journeyman license.

Subpart 1. Water conditioning contractor. This part requires an applicant for licensure as a water conditioning contractor to designate a water conditioning master or master plumber, licensed by the commissioner, as the individual responsible for the contractor's compliance with the water conditioning statutes, the Plumbing Code, and the rule part. This requirement is reasonable because it is important for DLI to know the identity of the water conditioning master or master plumber that responsible for compliance from both an administrative and an enforcement perspective. Additionally, it may be helpful for consumers to know that a business has specified an individual who is responsible for Code compliance when considering a contractor. Lastly, the specification of responsible individual is consistent with other trades licensed by DLI, which provides continuity and consistency.

The Department's Construction Codes and Licensing Division (CCLD) requested that the Board consider and approve additional requirements related to the resignation of or the replacement of the water conditioning master or master plumber that the contractor has designated as the individual responsible for its compliance. CCLD offers the following explanation of need and reasonableness for this requirement:

This part requires the designated responsible individual to provide the licensed water conditioning contractor a minimum 15-day notice before resigning as the responsible water conditioning master or master plumber for the contractor. Both the contractor and the responsible individual are required to immediately notify the

department upon the termination or separation of the responsible individual. The licensed water conditioning contractor will have 60 days from the date the responsible individual ceased employment to designate a new responsible individual. A water conditioning contractor that fails to replace the responsible individual within the specified 60-day period must cease and desist from performing or offering to perform licensed water conditioning work until a new responsible individual is designated. The license will be terminated by the department and may only be reinstated pursuant to the Minnesota Statute 326B.096.

The Board considered the request and agreed that it is important for the designated water conditioning master or master plumber to provide an opportunity for the contractor to replace the designated individual *before* the water conditioning master or master plumber will not be serving as the responsible individual. It is also reasonable for the contractor to have a specified period of time in which to replace the designated responsible individual, and be aware of the consequences for failing to do so.

Subp. 2. Water conditioning master. This part sets out the requirements for licensure as a water conditioning master. Applicants are required to satisfactorily pass an examination given by the commissioner. To qualify for examination, an applicant must have at least 12 months of practical experience in the planning and supervision of the installation and servicing of water conditioning systems. The examination and experience requirements are from Part 4715.5800, subp. 1 and 3.

Subp. 3. Water conditioning journeyman. This part sets out the requirements for water conditioning journeyman. Applicants are required to satisfactorily pass an examination given by the commissioner. To qualify for examination, an applicant must have at least six months of practical experience in the installation and servicing of water conditioning systems. The examination and experience requirements are from part 4715.5800, subp. 1 and 3.

Subp. 4. Experience. This part establishes that 12 months of practical experience means 1,750 hours that may be obtained over more than one 12-month period. The proposal also specifies that the maximum number of hours that may be credited in a 12-month period is 1,750. This is consistent with the structure of plumbing licenses. Additionally, practical experience is broken down into types of experience for each license type.

A candidate for the a water conditioning master examination is required to obtain at least 1750 with at least 450 hours related to installation, 300 to servicing, 250 to planning, and 250 supervising. The remaining 500 hours may be in any aspect of water conditioning work. The numerical values were determined based on the number of required hours for plumbing licenses. The “remaining hours” for plumbing licenses is approximately 28% of the total hours required therefore this percentage was also used for determining water conditioning requirements. Proper installation of water conditioning equipment in accordance with the rules contained in Chapter 4715 and experience servicing the equipment was a key factor in determining how the remaining. 1250 hours were split. Of the outstanding hours, 750 or 60% were divided between installation and servicing with installation more heavily weighted. The remaining 40% or 500 hours were divided equally between planning and supervising.

A candidate for the water conditioning journeyman examination is required to obtain at least six-months of practical experience equaling a minimum of 875 hours. 375 hours will be related to installation, and 250 to servicing. The remaining 250 hours can be in either discipline. These figures were determined by taking approximately 28% off the total number of hours required, and dividing the remainder in an approximate 60/40 split between the two disciplines with installation more heavily weighted.

The rule as proposed also includes a request from CCLD to allow the following experience to satisfy the practical experience requirement for the water conditioning master and journeyman:

- i. Experience while in the employ of a contractor licensed under Minnesota Statutes, sections 326B.46 or 326B.55 and this part;
- ii. Experience while working in Minnesota for an employer who is exempt from being licensed as a contractor under Minnesota Statutes, sections 326B.46 or 326B.55, subd. 1, para. (d), clause (2), if the water conditioning installation or servicing work is done under the supervision of a properly licensed individual;
- iii. Experience while performing the practical installation and servicing of water conditioning systems outside of Minnesota, which the department has determined is substantially equivalent to work performed while in the employ of a licensed contractor in Minnesota. The determination must be based on a certification by the employer for the type of work performed; or
- iv. Experience while performing the practical installation and servicing of water conditioning systems in the armed forces of the United States, which the department has determined is substantially equivalent to the work performed while in the employ of a licensed contractor in Minnesota. The determination must be based on a certification by the military for the type of work performed.

CCLD explained the need for and reasonableness of its request as follows:

Most personal license laws administered by the department, which require qualifying work experience as a precondition for licensure, only recognize work experience earned in the state of Minnesota while employed by a licensed or registered employer; and work experience from outside the state of Minnesota that is substantially equivalent to work performed while employed by a licensed or registered employer in the state. Establishing the situations that [an individual] may be awarded qualifying work experience provides clarity to the department when evaluating applicants and transparency to potential applicants considering licensure.

The Board considered the request and agreed to add the language for the reasons stated above. Finally, CCLD asked that zero hours of experience be permitted for individuals under the age of 17 because “personal licenses administered by the Department of Labor and Industry have minimum ages to obtain licensure set in statute or in rule. By setting a minimum age to start obtaining qualifying work experience, this part provides clear guidance to the department regarding acceptable experience and to any potential applicants on how the department will evaluate their experience.”

The Board considered the request and agreed to add the language for the reasons state above.

Subp. 5 **Examination.** This subpart requires applicants to submit forms approved by the commissioner and include all applicable fees required by chapter 326B. These requirements are moved from part 4715.5800, subp. 4.

The proposed language also moves existing requirements pertaining to the content of the examinations from Part 4715.5800, subp. 1. Finally, the required passing grade language is relocated from part 4715.5800, subp. 5.

Subp. 6. **Renewal and expiration.** This subpart requires renewal and expiration to in accordance with §§ 326B.092 to 326B.097, which establish fees, and 326B.50 to 326B.59, which apply to the licensing requirements.

Continuing Education.

4716.0200 DEFINITIONS.

All of the definitions in this part are needed to ensure that terms are understood by users. This provides for easier and more consistent enforcement of the rules statewide.

Subpart 1. **Scope.** This subpart specifies that the definitions in the part apply to the continuing education rules.

Subp. 2. **Continuing education program.** This definition clarifies that interaction between the instructor and individual must take place or meet the requirements in 4716.0210, subpart 1.

Subp. 3. **Hours of instruction.** This phrase means the number of hours that have been approved by the commissioner for an approved continuing education program.

Subp. 4. **Plumbing license.** This definition clearly states that the term “plumbing license” refers to individuals licensed by the department as either master plumber or journeyman plumber only.

Subp. 5. **Sponsor.** The term can refer to a person, partnership, corporation, limited liability company, professional association, government agency, or other entity authorized by law which provides educational programs and is approved by the department.

Subp. 6. **Restricted plumber.** This definition is needed to clarify that the term “restricted plumber” refers to individuals licensed by the department as either a restricted master plumber or a restricted journeyman plumber.

4716.0205 REQUIREMENTS.

Subpart 1. **Continuing education; content.** This subpart is needed and reasonable because it specifies the types of license and certification requiring continuing education and the minimum

number of hours required to renew the license or certification, which encourages a better understanding of new technologies and materials, and Code requirements. Acceptable subject matter is listed and the minimum number of hours required on listed subjects.

Subp. 2. Application. This proposed amendment is needed and justifiable. The amendment details the timeframe requirements to obtain the required continuing education hours, states that continuing education cannot be transferred, used more than once or carried over for use in future renewal periods. Individuals holding multiple licenses or certification listed in 4716.0205 may apply the continuing education hours earned to all. Individuals obtaining the required hours for a plumbing license would be able to apply those towards both plumbing license, a restricted plumber license, the water conditioning master and journeyman license and the medical gas certification. Individuals obtaining the required hours for a restricted plumber license would be able to apply those hours towards the water conditioning master and journeyman license and the medical gas certification. Individuals obtaining the required hours for the water conditioning master and journeyman license may apply those hours towards the medical gas certification. Individuals obtaining the required hours for medical gas certification may apply those hours to fulfill the requirements of the water conditioning master and journeyman license and to either the 12 hour or 4 hour requirement of the plumber license and restricted plumber license.

4716.0210 CREDIT FOR HOURS OF INSTRUCTION.

Subpart 1. Approval of continuing education programs. This subpart describes the application process, qualifications and any additional requirements which must be met for a continuing education program to be approved.

Subp. 2. Notification of presentations. This subpart is needed and justifiable because it informs the provider that the department must be notified in writing at least 30 days prior to conducting a program.

Subp. 3. Instruction in another state. This subpart describes the process which must be followed in order for continuing education program hours obtained in another state to be used to meet Minnesota's continuing education requirements. The proposed rule is reasonable because it allows individuals to obtain specialized instruction that may not be available in Minnesota, and may reduce costs.

Subp. 4. Qualifications of instructors. This subpart is needed because it provides the requirements and qualifications which must be met for an individual to be considered an instructor for continuing education by the department.

Subp. 6. Credit for teaching. This subpart requires the participant to complete the program in its entirety before the credited hours will be granted to the individual.

This amendment confirms that an instructor will be granted 1 hour of continuing education credit for each hour of instruction.

Subp. 7. Report of credits earned. This amendment details the process which must be followed and information required to provide individuals who have completed an approved continuing

education program a certificate of completion and the department an attendance list of those individuals. This will allow the department to record continuing education hours completed and track the required hours needed for license and certification renewal.

Subp. 8. Credit for completing an educational program. This subpart requires the participant to complete the program in its entirety before the credited hours will be granted to the individual.

REPEALER: This section specifies that parts 4715.5800 and 4715.6000 are repealed because the substantive requirements have been moved into proposed rule part 4716.0092, so they are no longer needed. Moving the requirements of these two rules from the Plumbing Code and into chapter 4716 is consistent because as requirements related to licensing they are more appropriately housed in chapter 4716, which is specific to the licensure, certification, and registration requirements for persons engaged in plumbing. The Plumbing Code, on the other hand, establishes the minimum construction standard for the state.

CONCLUSION

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



December 12, 2011

John Parizek, Chair
Minnesota Plumbing Board

ⁱ 2010 Minn. Laws, chapter 183, section 6, amending, in part, Minn. Stat. § 326B.435, subd. 2, item 5:

(5) ~~except for rules regulating continuing education,~~ adopt rules that regulate the licensure or registration of plumbing contractors, journeymen, apprentices, master plumbers, restricted master plumbers, ~~and restricted journeymen, water conditioning contractors, and water conditioning installers,~~ and other persons engaged in the design, installation, and alteration of plumbing systems ~~or engaged in or working at the business of water conditioning installation or service,~~ except for those individuals licensed under section 326.02, subdivisions 2 and 3. The board shall adopt these rules pursuant to chapter 14 and as provided in subdivision 6, paragraphs (e) and (f);...

ⁱⁱ Enacting Minn. Stat. § 326B.438, 2010 Minn. Laws, Chapter 183, section 8, states in pertinent part:

Subd. 2. License and certification required. A person shall not engage in the installation, maintenance, or repair of a medical gas system unless the person possesses a current Minnesota master or journeyman plumber's license and is certified by the commissioner under rules adopted by the Minnesota Plumbing Board. The certification must be renewed annually for as long as the certificate holder engages in the installation, maintenance, or repair of medical gas and vacuum systems. If a medical gas and vacuum system certificate is not renewed within 12 months after its expiration the medical gas and vacuum certificate is permanently forfeited.

Subd. 3. Exemptions. (a) A person who on the effective date of this section holds a valid certificate authorized by the American Society of Sanitary Engineering (ASSE) in accordance with standards recommended by the National Fire Protection Association under NFPA 99C is exempt from the requirements of subdivision 2. This exemption applies only if the person maintains a valid certification authorized by the ASSE. (b) A person who on the effective date of this section possesses a current Minnesota master or journeyman plumber's license and a valid certificate authorized by the ASSE in accordance with standards recommended by the National Fire Protection Association

under NFPA 99C is exempt from the requirements of subdivision 2 and may install, maintain, and repair a medical gas system. This exemption applies only if a person maintains a valid Minnesota master or journeyman plumber's license and valid certification authorized by the ASSE.

ⁱⁱⁱ 1Sp. 2011 Minn. Laws, Ch. 4, Art. 3, Sec. 14, states in pertinent part:

(5) adopt rules that regulate the licensure, certification, or registration of plumbing contractors, journeymen, unlicensed individuals, master plumbers, restricted master plumbers, restricted journeymen, restricted plumbing contractors, backflow prevention rebuilders and testers, water conditioning contractors, and water conditioning installers, and other persons engaged in the design, installation, and alteration of plumbing systems or engaged in or working at the business of water conditioning installation or service, or engaged in or working at the business of medical gas system installation, maintenance, or repair, except for those individuals licensed under section 326.02, subdivisions 2 and 3. The board shall adopt these rules pursuant to chapter 14 and as provided in subdivision 6, paragraphs (e) and (f);...

See also, *infra* at 5.

^{iv} The amendments from 2011 Minn. Laws, Ch. 4, Art. 3, Sec. 16 (effective July 1, 2011) included:

Subd. 2. **License and certification required.** A No person shall perform or offer to perform the installation, maintenance, or repair of medical gas systems unless the person obtains a contractor license. An individual shall not engage in the installation, maintenance, or repair of a medical gas system unless the ~~person~~ individual possesses a current Minnesota master or journeyman plumber's license and is certified by the commissioner under rules adopted by the Minnesota Plumbing Board. The certification must be renewed ~~annually~~ biennially for as long as the certificate holder engages in the installation, maintenance, or repair of medical gas and vacuum systems. If a medical gas and vacuum system certificate is not renewed within 12 months after its expiration the medical gas and vacuum certificate is permanently forfeited.

Subd. 3. **Exemptions.** ~~(a) A person~~ An individual who on August 1, 2010, ~~holds~~ possesses a valid certificate authorized by meeting the requirements of the American Society of Sanitary Engineering (ASSE) Standard 6010 and is a qualified brazer in accordance with standards recommended by the provisions required in the National Fire Protection Association under NFPA (NFPA) 99C is exempt from the licensing requirements of subdivision 2 and may install, maintain, and repair a medical gas system. This exemption applies only if the ~~person~~ individual maintains a valid certification authorized by the ASSE in accordance with ASSE Standard 6010 and the brazer qualifications in NFPA 99C, and is certified by the commissioner under rules adopted by the Minnesota Plumbing Board.

~~(b) A person who on August 1, 2010, possesses a current Minnesota master or journeyman plumber's license and a valid certificate authorized by the ASSE in accordance with standards recommended by the National Fire Protection Association under NFPA 99C is exempt from the requirements of subdivision 2 and may install, maintain, and repair a medical gas system. This exemption applies only if a person maintains a valid Minnesota master or journeyman plumber's license and valid certification authorized by the ASSE.~~

EFFECTIVE DATE. The requirement under subdivision 2 and subdivision 3 that a master journeyman plumber or exempt individual must be certified by the commissioner and the fee in subdivision 4 are not effective until 180 days after the Minnesota Plumbing Board adopts rules.