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MINNESOTA DEPARTMENT OF
LABOR & INDUSTRY

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November 13, 2008

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

Re: In the Matter of the Proposed New Rules Governing Residential Contractor Continuing Education Instructor Approval, Minnesota Rules, Parts 2891.0500 through 2891.0510; Governor's Tracking No. AR 392

Dear Librarian:

The Minnesota Department of Labor and Industry intends to adopt rule amendments that will clarify the practical experience requirement for continuing education instructors who lecture in an educational offering that is preapproved by the Department in the regulated industries of residential contracting, residential remodeling, and residential roofing. We plan to publish a Notice of Intent to Adopt Rules Without a Public Hearing in the November 17, 2008 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 a copy of the Statement of Need and Reasonableness at the time we are mailing our Notice of Intent to Adopt Rules.

If you have any questions, please contact me at (651) 284-5128.

Yours very truly,

A handwritten signature in black ink, appearing to read "Patricia Munkel-Olson".

Patricia Munkel-Olson
Construction Codes and Licensing Attorney

Enclosure: Statement of Need and Reasonableness

Minnesota Department of Labor and Industry

Construction Codes and Licensing Division

STATEMENT OF NEED AND REASONABLENESS

Proposed New Rules Governing Residential Contractor Continuing Education Instructor Approval, [Proposed] Minnesota Rules, Parts 2891.0500 through 2891.0510.

INTRODUCTION

The Department of Labor and Industry proposes to amend Minnesota Rules, Chapter 2891, by proposing new rules pursuant to Minnesota Statutes §§ 326.87 and 326B.02. The proposed rules will clarify the practical experience requirement for continuing education instructors¹ and define terms that are used in the proposed rules.

Minnesota Statutes § 326.87, subdivision 10, provides, in part, that instructors must be qualified by education, training, or experience. The statute uses the term “practical experience.” The proposed rules define terms and clarify how “practical experience” is calculated.

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 Carrie Rohling at the Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155, e-mail at dli.rules@state.mn.us, telephone (651) 284-5006, or fax (651) 284-5725. TTY users may call (651) 297-4198.

STATUTORY AUTHORITY

Pursuant to the Department of Administration Reorganization Order No. 193, dated April 4, 2005, the responsibilities of the Department of Commerce in relation to Residential Contractors and Remodelers as set forth in *Minnesota Statutes* §§ 326.83 through 326.992 and chapter 327A (2004) were transferred to the Department of Labor and Industry.² The Reorganization Order was codified by the 2007 Legislature.³

Minnesota Statutes § 326.87, subdivision 1 (Supp. 2007) (to be renumbered 326B.82), authorizes the Department to adopt rules for “continuing education requirements and course and

¹ For the purposes of these rules the term “instructor” applies to those instructors that teach courses that are approved by the Department pursuant to Minn. Stat. § 326.87 (Supp. 2007) (applicable to residential contractor, residential remodeler, and residential roofer continuing education).

² Reorganization Order No. 193 was effective upon filing with the Secretary of State on May 16, 2005, and shall remain in effect until amended, repealed, or superseded. For a copy of the reorganization order, please contact Carrie Rohling by email at dli.rules@state.mn.us, or phone to (651) 284-5217.

³ See 2007 Minn. Laws, Chapter 140, Articles 2 and 8.

instructor approval.”⁴

Minnesota Statutes § 326B.02, subdivision 5 (Supp. 2007), states that “[t]he commissioner may, under the rulemaking provisions of chapter 14 and as otherwise provided by this chapter, adopt, amend, suspend, and repeal rules relating to the commissioner’s responsibilities under this chapter...”⁵

Pursuant to *Minnesota Statutes* § 14.125, the Department published a notice of intent to adopt rules within 18 months of the effective date of the law authorizing or requiring rules to be adopted. Because the Department’s notice of intent to adopt rules published before November 25, 2008, the rulemaking authority has not expired.⁶

REGULATORY ANALYSIS

Minnesota Statutes § 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 agency’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:

The classes of persons will probably be affected by the proposed rule include sponsors and course coordinators who are responsible for ensuring that an instructor is qualified to teach the course offering and individuals who desire to teach such courses, and those that receive the continuing education.

There are no costs associated with the proposed rules; therefore, no one will bear the costs of the proposed rule.

Those classes of persons that will benefit from the proposed rules include those that participate in providing continuing education (sponsors, coordinators, and instructors), and those that receive the continuing education.

(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:

There will be no additional cost to this agency or any other agency to implement and enforce the proposed rules. The Department does not anticipate effect on state revenues.

(3) a determination of whether there are less costly methods or less intrusive methods for

⁴ See also, 2007 Minn. Laws Ch. 140, Art. 2, Sec. 3 (effective May 26, 2007) (new authority pertains to instructors).

⁵ See also, 2007 Minn. Laws, Ch. 140, Art. 8, Sec. 12 (effective December 1, 2007).

⁶ The Department has relied on the general rulemaking authority of Minn. Stat. § 326B.02 in several rulemakings where a notice of intent to adopt rules has already published in the State Register.

achieving the purpose of the proposed rule:

There are no less costly or intrusive methods to clarify the terms used in the continuing education statutes and to develop the minimum standard for practical experience because the enabling legislation required the Department to establish standards for continuing education instructor approval.

(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:

The Department did not consider any alternative methods for achieving the purpose of the proposed rules because the most transparent, efficient and cost effective method of informing affected parties how practical experience will be calculated and defining specific terms is through rulemaking.

(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 no probable costs associated with compliance with the proposed rule because they merely clarify statutory requirement, so there would be no costs to be borne by identifiable categories of affected parties.

(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 government units, businesses, or individuals:

The consequence of not adopting the proposed rule could result in unqualified instructors providing inappropriate, inaccurate, or unrelated information to the regulated industries (residential contracting, residential remodeling, and residential roofing). The Department anticipates that the costs relative to a course either with this rule or without this rule will be the same (payment for course and other course materials); However, the quality of the course may differ. The course, when approved, will either be taught by a potentially unqualified instructor (without this rule) or a qualified instructor (with this rule). Costs to the coordinators and sponsors should not differ – instructors have been and will continue to be assessed regarding their ability to instruct. With this rule, a standard has been set that will make the assessment by coordinators and the Department easier and more consistent.

(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:

The Department is not aware of any federal regulations governing the qualifications of instructors presenting approved continuing education related to the regulated industries.

PERFORMANCE-BASED RULES

The proposed rules provide definitions and a method to calculate applicable practical experience so that the regulated industry will be provided with fair and consistent assessments regarding applicable experience and knowledge that will, in turn, ensure that appropriate instruction is provided to the industry. By developing a method to calculate practical experience required for instruction, the Department has established a minimum standard that must be met to help ensure the quality of instruction provided to the industry. The standard also provides a mechanism for instructors' use in determining their qualifications. . . .

ADDITIONAL NOTICE

We will mail or email the proposed rules and the Notice of Intent to Adopt Rules Without a Hearing to interested parties. These parties include:

1. Course coordinators; and
2. Course sponsors.

Our Notice Plan also includes giving notice required by statute. We will mail the proposed rules and the Notice of Intent to Adopt Rules Without a Hearing to everyone who has registered to be on the Department's rulemaking mailing lists pertaining to all Department and all CCLD rulemakings, which are maintained pursuant to Minnesota Statutes § 14.14, subdivision 1a.

We will also post the proposed rules, the Notice of Intent to Adopt Rules Without a Hearing, and this Statement of Need and Reasonableness on the Department's rulemaking web page located at http://www.doli.state.mn.us/rulemaking_activity.html.

We will also give notice to the Legislature per Minnesota Statutes § 14.116.

CONSULT WITH FINANCE ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Department has consulted with the Commissioner of Finance. We did this by sending Ryan Baumtrog, Executive Budget Officer at the Department of Finance copies of the documents sent to the Governor's Office for review and approval by the Governor's Office prior to the Department publishing the Notice of Intent to Adopt. We sent the copies on October 21, 2008. The documents included: the Governor's Office Proposed Rule and SONAR Form; almost final draft rules; and almost final SONAR. Mr. Baumtrog sent a memorandum dated October 27, 2008, which included the following comments:

On behalf of the Commissioner of Finance, I have reviewed the proposed rule and related Statement of Need and Reasonableness to explore the potential impact these changes may have on local governments.

The proposed rules clarify the practical experience requirement for continuing education instructors, define terms used in the proposed rules and describe the term

“practical experience” and how it is calculated. No costs are associated to local governments as a result of clarifying terms and providing a calculation method for practical experience.

In my opinion, the proposed changes will not impose a cost on local governments.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

There are no costs associated with complying with the proposed rules because they merely clarify terms that are used within the proposed rules and provide a calculation method for practical experience; therefore, there will be no financial impact to a small business or city that must comply with the proposed rules in the first year after the rule takes effect.

LIST OF WITNESSES

If these rules go to a public hearing, the Department anticipates having staff from its Construction Codes and Licensing Division testify in support of the need for and reasonableness of the proposed rules.

RULE-BY-RULE ANALYSIS

2891.0500 DEFINITIONS.

This proposed rule tells regulated persons how particular terms are defined when used in the proposed rules. It is both needed and reasonable to use definitions to specify how terms are being used in the application of the rule to eliminate confusion for regulated and interested parties.

Subpart 1. Scope. This subpart specifies that the definitions of this part apply to the proposed rules.

Subp. 2. Practical experience. This subpart defines “practical experience” as an individual’s personal ability or skill that is derived from actual work in the regulated industry or lecturing in an approved educational offering about the regulated industry.

Subp. 3. Qualified instructor. This subpart defines “qualified instructor” as an individual that satisfies the education, training, or experience requirement set out in Minn. Stat. § 326.87, subd. 10.

2891.0505 EXEMPTION FROM PRACTICAL EXPERIENCE REQUIREMENT.

It is not the Department’s intention to disqualify courses with designated instructors that have been approved prior to the effective date of this rule. This proposed rule ensures that approved continuing education courses with designated instructors would continue without the need for reapplication and approval.

2891.0510 PRACTICAL EXPERIENCE.

A calculation method is both needed and reasonable so that qualified instructors and those interested in becoming qualified instructors are aware of how practical experience is calculated by course coordinators and the Department.

This calculation method is modeled, in part, on the carpenter apprenticeship program. This program (the hours required for a carpenter to become a journeyman) was used as a guide to determine the comparable number of hours that will be necessary for an instructor without a degree to obtain the skills and knowledge to enable an individual to provide appropriate instruction to the regulated industry. This program was also used as a model because carpentry is an identified skill category in the regulated industry and the program standards were established without consideration of a degree. To establish an appropriate minimum number of hours required for every 12 months of actual experience needed, the Department had to compare both professions without consideration of degree. The apprenticeship program requires carpenter apprentices to accumulate at least 6,000 hours of experience to be qualified as a journeyman carpenter, which permits the carpenter to work independently and without supervision. The requirement in this rule part is derived from the number of required hours of experience that are equitable to that for a journeyman carpenter divided over the five-year period required for practical experience (without a degree) in the instructor qualifications (Minnesota Statutes § 326.87, subd. 10(b)(2)), which equates to 1,200 hours every 12 months. The Department determined that an individual who has successfully obtained the number of hours required to calculate practical experience, similar to that of a journeyman carpenter, would be appropriately qualified to provide course instruction to the regulated industry. The requirement that the actual work be specifically related to the regulated industry is reasonable because it is important that these instructors have adequate knowledge and experience about the subject matter they wish to teach. This standard will help ensure that qualified instructors have the knowledge that is appropriate to teaching a course on a particular subject matter in the regulated industry.

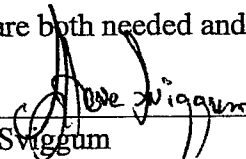
EFFECTIVE DATE.

The proposed rules specify that the rules will be effective March 30, 2009 or five working days after the notice of adoption is published in the State Register, whichever is later.⁷

CONCLUSION

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

Oct. 30th, 2008



Steve Swiggum
Commissioner

⁷ Because these rules are not a part of the Minnesota State Building Code, Minn. Stat. § 16B.64, subd. 8 (Supp. 2007), does not apply to this rulemaking.