Minnesota Board of Electricity

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Governing Satellite System Installer Continuing Education and Satellite System Installer Certification Programs, *Minnesota Rules,* Chapter 3800; Revisor's ID Number R-04131 OAH Docket No. 82-1900-31254

INTRODUCTION

The Minnesota Board of Electricity ("Board") is considering rule amendments for a new type of electrical license called Satellite System Installer and the rules governing Satellite Installer Continuing Education and Satellite System Installer Certification Programs.

Minnesota Statutes, §§ 326B.31 to 326B.399 (2012) are known as the Minnesota Electrical Act ("Electrical Act"). The Electrical Act includes requirements related to licensing and registration of individuals, employers and companies that perform electrical wiring, including satellite antenna systems. Administrative rules related to these requirements are in Minnesota Rules, chapter 3800. Although the Board has certain rulemaking authority, the Department of Labor and Industry ("Department" or "agency") administers and enforces the Electrical Act and Minnesota Rules, chapter 3800. Minn. Stat. § 326B.32, subd. 2(a).

In 2012, the Minnesota Legislature created a new type of electrical license called "Satellite system installer." Minn. Stat. § 326B.33, subd. 7a. The proposed rules establish continuing education and renewal requirements for satellite system installer licenses and certification program requirements. The proposed certification program rules were modeled after the electrician training program rules in Minnesota Rules, chapter 3801, for consistency. The Board anticipates that parties who will create certification programs under the proposed rules will already be familiar with chapter 3801 program certification rules; consistency between chapter 3801 and the proposed rules will help alleviate confusion.

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 Suzanne Todnem at Minnesota Department of Labor and Industry, 443 Lafayette Road North, St. Paul, Minnesota 55155, dli.rules@state.mn.us, 651.284.5006, or fax 651.284.5725.

STATUTORY AUTHORITY

Minnesota Statutes, section 326B.32, subdivision 2(a)(5) provides the Board with general rulemaking authority regarding the licensure and registration of electrical businesses, electrical contractors, various types of electricians and other persons who perform electrical work.

Minnesota Statutes, section 326B.32, subdivision 2(a)(6) provides the Board with general rulemaking authority regarding continuing education for individuals licensed or registered as, among others, other persons who perform electrical work.

In 2012, the Minnesota Legislature passed legislation that provides the Board of Electricity with specific statutory authority for Satellite System Installer Continuing Education, Satellite

System Installer Certification Programs and a new type of electrical license called Satellite System Installer, effective October 1, 2012. Minn. Stat. § 326B.33, subd. 7a.

The 18-month time limit in Minnesota Statutes, section 14.125 applies here.[1]

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

REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the Statement of Need and Reasonableness ("SONAR"). Paragraphs (1) through (8) below quote 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"

The following classes of persons will probably be affected by the proposed rules:

- Applicants for a satellite system installer license
- Technical colleges and other training providers
- Suppliers of Satellite Broadcast Communication Systems
- Consumers of Satellite Broadcast Communication Systems
- Satellite System Installers and contractors
- Code enforcement authorities
- Building owners who have satellite antenna systems installed

Persons who perform the relevant electrical work and employers of those persons will directly bear the costs of licensing fees and continuing education requirements but will likely pass those costs on to their many customers.

Building owners who have satellite antenna systems installed will benefit by having a properly installed satellite antenna system that is safer than an improperly installed satellite antenna system.

Satellite antenna system installers will benefit by having necessary training and oversight to perform their work safely.

"(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"

Probable costs to the agency of implementation and enforcement are anticipated to be minimal because costs to the agency will be offset by license fees.

There are no anticipated probable costs to any other agency for implementation and enforcement.

There is no anticipated effect on state revenues because licensing fees collected for satellite system installer licenses will not go into the general fund.

[1] Pursuant to section 14.125, the Board must publish the notice by March 31, 2014. It is anticipated this time limit will be met to properly adopt these proposed rules.

“(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 cannot be achieved through less costly or less intrusive methods because they directly implement a Minnesota statute.

“(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 alternative methods for achieving the purpose of the proposed rules were seriously considered by the Board because the purpose of the rules is to regulate the installation of satellite antenna systems pursuant to statute to ensure the health and safety of the public.

“(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”

The probable costs of complying with the proposed rules are anticipated to be minimal and will be directly borne by satellite antenna system installers or their employer(s). The probable costs include education costs, examination fees and licensing fees. The costs will likely be passed on to their many customers.

“(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 probable costs or consequences of not adopting the proposed rules are the costs of possible damage to buildings and equipment resulting from improperly installed satellite antenna systems.

The costs of damage to buildings and equipment resulting from improperly installed satellite antenna systems are borne by the building owners, possibly the satellite antenna system installers and the Department of Public Safety and local fire departments who respond to fires resulting from improperly installed satellite antenna systems.

“(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 federal regulations regarding satellite antenna system installers.

“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule . . . . ‘"Cumulative effect" means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”

There are no federal or other state regulations regarding satellite antenna system installers, so there is no cumulative effect.

PERFORMANCE-BASED RULES

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals. Minnesota Statutes sections 326B.31 and 326B.33 require Satellite System Installers to be licensed and meet certain education and ability requirements. The regulatory objective of the proposed rules is to require Satellite System Installers be competent to perform the work. To meet this goal, the proposed rules require licensing, certification and continuing education. The requirements are performance-based because they establish a minimum competency without requiring one particular method.

ADDITIONAL NOTICE

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a February 19, 2014, Letter and Order by Administrative Law Judge Barbara J. Case.

As required by statute, we will mail or email the proposed rules and Dual Notice to everyone who has registered to be on the Department's rulemaking mailing lists for electrical rules under Minnesota Statutes, section 14.14, subdivision 1a. Pursuant to Minnesota Statutes, section 14.116, we will also give notice to the Legislature by sending copies of the Dual Notice and SONAR to the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules, chief House and Senate authors of the rulemaking authority and to the Legislative Coordinating Commission.

In addition to the rulemaking mail and email lists, the Board will be mailing or e-mailing the Dual Notice and proposed rules to trade associations involved in electrical and building construction. Those associations are as follows:

a. Associated Builders and Contractors
b. National Electrical Contractors Association
c. Minnesota Electrical Association
d. Local chapters of the International Brotherhood of Electrical Contractors (IBEW Local 23, 110, 160, 242, 292, 294, 343, 949, and 1999)
e. Local chapter of the Association of Minnesota Building Officials (AMBO)
f. National Association of Elevator Safety Authorities (NAESA)
g. Minnesota Mechanical Contractors Association
h. Association of General Contractors of Minnesota
i. Minnesota Utility Contractors Association
j. Minnesota chapter of the International Association of Electrical Inspectors (IAEI)
k. Contract Electrical Inspector Association (CEIA)
l. Communication, Control, Alarm, Remote, Signaling Association (CCARSA)
m. Minnesota Municipal Utilities Association
n. Minnesota Electronic Security and Technology Association
o. Builders Association of Minnesota (BAM)
p. Builders Association of the Twin Cities
q. Minnesota State Fire Chiefs Association

r. Minnesota Plumbing, Heating and Cooling Contractors Association
s. American Society of Plumbing Engineers – Minnesota Chapter
t. American Society of Civil Engineers – Minnesota Section
u. Association of Minnesota Counties
v. Building Owners and Managers (BOMA)/St. Paul
w. League of Minnesota Cities
x. American Council of Engineering Companies of Minnesota
y. Minnesota Pipe Trades Association
z. Minnesota State Fire Marshal Division
aa. Minnesota Association of Townships
bb. North Central Electrical League
cc. Metropolitan Council
dd. Satellite Broadcasting and Communications Association
ee. Technical colleges that have programs approved by the Department for experience credit under Minn. R. parts 3801.3820 to 3801.3885 and Minnesota State Colleges and Universities.

As a supplement to the additional notice plan approved by the Administrative Law Judge, the Board will be mailing the Dual Notice and proposed rules to the following list of technical colleges that have programs approved by the Department for experience credit under Minnesota Rules parts 3801.3820 to 3801.3885, a couple of programs that are not approved, and to MNSCU.

Anoka Technical College	1355 W. Highway 10 Anoka, MN 55303
Dakota County Technical College	1300 145th Street East Rosemount, MN 55068-2999
Dunwoody College of Technology	818 Dunwoody Blvd Minneapolis, MN 55403
Hibbing Community College	1515 E. 25th St. Hibbing, MN 55746
Minnesota State Community and Technical College	1414 College Way Fergus Falls, MN 56537
Minnesota West Community and Technical College	1314 N. Hiawatha Ave. Pipestone, MN 56164
North Dakota State College of Science	800 6th St N Wahpeton, ND 58076
Northeast Iowa Community College	1625 Hwy 150 South, Calmar, IA, 52132
Northwest Iowa Community College	603 W Park St, Sheldon, IA, 51201

Northwest Technical College	905 Grant Ave. S.E. Bemidji, MN 56601
Ridgewater College	2101 15th Ave NW Willmar, MN 56201
Riverland Community College	1900 8th Ave. N.W. Austin, MN 55912
St. Cloud Technical & Community College	1540 Northway Drive Saint Cloud, MN 56303
St. Paul College	235 Marshall Avenue St. Paul, MN 55102
Minneapolis Community and Technical College	1501 Hennepin Avenue Minneapolis, MN 55403
Minnesota State Colleges and Universities	30 7th Street East St. Paul, MN 55101-7804

The Board will publish the proposed rules, the Statement of Need and Reasonableness, and Dual Notice on the Board's webpage on the Department of Labor and Industry's website. The proposed rules will be published in the *State Register*.

Our Notice Plan does not include notifying the Commissioner of Agriculture because the proposed rules do not affect farming operations per Minnesota Statutes, section 14.111.

Our Notice Plan does not include notifying the Council on Affairs of Chicano/Latino People because the proposed rules do not have their primary effect on Chicano/Latino people; therefore, Minnesota Statutes, section 3.9223 does not apply.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Department consulted with Minnesota Management and Budget (MMB). We did this by sending MMB copies of the documents that we send to the Governor's Office for review and approval. We sent the copies on January 23, 2014. The documents included: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. MMB Executive Budget Officer Elisabeth Hammer responded, in part, as follows in a letter dated February 3, 2014: "Based upon the information provided to me by the Department of Labor and Industry, there does not appear to be significant costs to local units of government as a result of this proposed rule that are not recoverable through local fees as a result of the proposed rule."

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

Minnesota Statutes, section 14.128 requires the agency to determine whether a local government will have to adopt or amend an ordinance or other regulation to comply with a proposed agency rule and submit this determination for ALJ approval. An agency must make

this determination before the close of the hearing record or before the agency submits the record to the administrative law judge if there is no hearing.

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 has determined that they do not because the requirements for training and licensing are administered by the department and there is no provision in the governing statutes to allow local administration.

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.[2]

The Board has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis paragraph number five of this SONAR on page three. The Board considered whether these costs would exceed $25,000 during the first year for any small business or city. The Board, which includes representatives from various areas of the industry, concluded that the costs would not exceed $25,000.

[2] A small business is defined as "any one business that has less than 50 full-time employees." Minn. Stat. § 14.127. A small city is defined as "any one statutory or home rule charter city that has less than ten full-time employees." Id.

LIST OF WITNESSES

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

1. Mr. Anthony C. Toft, chair of the Board, if necessary
2. Mr. John Schultz, commissioner's designee to the Board, if necessary

RULE-BY-RULE ANALYSIS

3800.3602 REQUIREMENTS FOR RENEWAL OF ELECTRICIAN, SATELLITE SYSTEM INSTALLER, AND POWER LIMITED TECHNICIAN LICENSE AND RENEWAL OF REGISTERED UNLICENSED INDIVIDUAL REGISTRATION

3800.3602, subpart 2. Hours of Instruction.

In this subpart, the specific licenses listed (e.g., "an electrician or power limited technician license") are replaced with an encompassing phrase (e.g., "an individual license identified in subparts 2 and 5") in order for this requirement to also apply to the new satellite system installer license. The new satellite system installer license is different from an electrician license. Similarly, the modifier "an electrician" before "license" in the last two sentences is deleted so as to include the non-electrician license of satellite system installers. These amendments are necessary to include the new satellite system installer license in the applicability of the rule part.

3800.3602, subpart 5. Satellite system installer renewal.

This is a new subpart. Pursuant to Minn. Stat. § 326B.33, this new subpart requires four hours of instruction on the NEC for renewal of a satellite system installer license. This addition is necessary to create the statutorily determined continuing education requirements to renew the satellite system installer license.

3800.3603 CREDIT FOR INSTRUCTION

3800.3603, subpart 3. Exception to preapproval.

The term "satellite system installers" is added to the list of licenses for which approval of continuing education credit may be obtained (in addition to electricians and power limited technicians) in another state. This amendment is necessary to allow satellite system installers to obtain continuing education credit in another state while maintaining quality control measures.

3800.3603, subpart 5. Qualifications of instructors.

Subitem D. The phrase, "and satellite broadcast communications systems," is added. The proposed rule requires instructors of satellite broadcast communication systems, in addition to technology systems, to be certified by a national training program. This is necessary to maintain the quality of instructors.

3800.3604 PURPOSE

This is a new rule part. This rule part explains that the purpose of these rules is to "establish requirements for approval of programs that may be used to fulfill the qualification requirement for satellite system installer license applications." It is necessary and reasonable to include a purpose section.

3800.3605 DEFINITIONS

This is a new rule part with four subdivisions, three of which offer definitions for the purposes of parts 3800.3604 to 3800.3613. These proposed terms and definitions are used in this rule and have a unique meaning in the specified rule parts. Defining these terms to meet the specific needs of rule parts 3800.3604 to 3800.3613 is necessary and reasonable to avoid confusion or repetition.

3800.3606 SATELLITE SYSTEM INSTALLER CERTIFICATION PROGRAM

This is a new rule part. The authorizing language in Minn. Stat. § 326B.33 requires certification of "completion of the National Standards and Testing Program for satellite system installers sponsored by the Satellite Broadcasting and Communications Association of America, Inc. *or other program approved by the board*." Emphasis added. This rule part establishes the minimum number of student and instructor contact time for approval of some "other program approved by the board." This requirement is necessary and reasonable because the certification program educates on electrical matters in order to avoid improper installation that can cause building fires; it sets the foundation for certification programs permitted under Minn. Stat. § 326B.33.

3800.3607 APPLICATION FOR PROGRAM APPROVAL

This is a new rule part. Minn. Stat. § 326B.33 allows the Board to approve satellite system installer certification programs. This part lists seven application requirements to apply for approval of a satellite system installer certification program.

Subpart 1. The application requirements contain the minimum amount of information the Department needs in order to know if a proposed program will satisfy the statutory and rule requirements for an approved program. There are only seven items required. This minimal requirement balances the burden of applying with the Department's need for information to accurately approve qualified programs.

Subpart 2. All applications will go through a process of approval that includes opportunities, if necessary, to remedy deficiencies rather than immediate rejection.

This rule part is necessary and reasonable to provide an application process to create approved certification programs.

3800.3608 REPORTING AND REAPPLICATION FOR APPROVAL

This is a new rule part. This rule part provides a method for approved programs to maintain and renew status as an approved certification program. This rule part also permits the commissioner to obtain information about the program to verify compliance with these rule parts. This part ensures that approved programs do not substantially deviate from the content they were approved under. It does, however, allow programs to be modified as necessary to address new technologies and technical requirements in the interim between approval submittals. In addition to submitting an annual report, program administrators of approved programs are required by this part to submit a complete application for approval every five years, thereby ensuring that conditions for approval are continually met. The five-year interval was selected because it corresponds to third-party accreditation recertification intervals that many technical colleges participate in. The intent of the Board is to correlate individual program resubmittal schedules with other recertification schedules whenever possible to result in the least amount of redundant effort on the part of program administrators. Administrators of approved programs are required to notify the board when an approved program is discontinued to ensure that the board is able to disseminate accurate information in its communications with the public.

Item A. This is an annual requirement for approved programs to provide an annual report to the commissioner. This annual report is reasonable and necessary because it is minimal burden but maintains quality control of approved programs.

Item B. This is the reapplication process. The date (July 1) and time period (fifth year) are consistent with Minnesota Rules chapter 3801, Electrical Procedures and Training. Specifically, this proposed rule part mirrors part 3801.3845, item B. Part 3801.3845, item B, grants discretion to modify the initial time period for resubmission because of the large quantity of potential reapplications. Although the need is not anticipated to be the same for this proposed rule, for consistency between the similar rules, the same discretion is proposed.

Item C. This item requires the administrator of an approved program to provide survey information upon the request of the commissioner. This allows the commissioner to follow up on approved programs to ensure the program standards are maintained.

Item D. This item requires the administrator of an approved program to notify the commissioner when an approved program is discontinued. The burden of notification is minimal but aids the Department in maintaining and disseminating accurate information as explained above.

This rule part is necessary and reasonable so approved programs do not have to reapply new every year while allowing the Department to maintain quality oversight.

3800.3609 REMOVAL OF APPROVAL

This is a new rule part. This rule part provides the bases of removal of approval of a certification program. Removal authority is granted to the commissioner. This rule part is necessary because if certification programs fail to comply with the reporting and application requirements of these rule parts, the commissioner must be able to prevent further noncompliance. This is particularly important because a program's approval does not expire; removal of approval or a program's self-initiated discontinuance are the only methods of terminating an approved program. This rule part is reasonable because it provides clear, relevant bases of removal of approval.

3800.3611 VERIFICATION OF COMPLETION

This is a new rule part. This rule part requires approved certification programs to provide verification of an applicant's completion of the approved program. This rule part is necessary for applicants to be able to demonstrate completion of the requirement for a satellite system installer license and for the commissioner to be able to access such verification through the program provider. It is reasonable to require verification of completion of an approved certification program when it is a license requirement.

3800.3612 SATELLITE SYSTEM INSTALLER CERTIFICATION PROGRAM CONTENT

This is a new rule part. This rule part provides specific content topics and an examination requirement that a certification program must include for approval, including a minimum of 20 hours of student and instructor contact time. Content and examination requirements are necessary for potential program providers to know how to design an approved certification program. These requirements establish quality control measures to ensure approved certification programs provide instruction in a variety of specified areas. The specified skill areas establish minimum program content areas so persons completing approved programs have the knowledge and skills to perform accurate and safe satellite system installation work. Thus, the risk of fire hazards, among other potential hazards, is reduced.

3800.3613 QUALIFICATIONS OF INSTRUCTORS FOR SATELLITE SYSTEM INSTALLER CERTIFICATION PROGRAMS

This is a new rule part. This rule part establishes the minimum requirements for instructors of satellite system installer certification programs. These requirements ensure that instructors have the knowledge and experience that is current with the industry. It is important to have these quality control measures in place for instructors because they will affect many certification program participants. It is crucial to have properly qualified instructors so the content of the programs are correct and communicated correctly. This rule part is reasonable because the requirements establish minimum qualifications that an instructor must have to ensure safe, informed satellite system installers without being unduly burdensome.

CONCLUSION

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

March 5, 2014
Date

Anthony C. Toft
Chair, Minnesota Board of Electricity

This SONAR will be made available for public review on March 7, 2014.