

Minnesota Plumbing Board

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Governing Plumber Licensing, Minnesota Rules, chapter 4716; Revisor's ID Number R-04365

INTRODUCTION

The Minnesota Plumbing Board (“Board”) intends to adopt rules regulating the registration of unlicensed individuals who perform water conditioning installation, registration of unlicensed individuals who perform plumbing, examination and licensing of both plumbers and water conditioners, and continuing education requirements for licensed individuals and registered unlicensed individuals.

In 2017, the Minnesota Legislature granted the Board rulemaking authority over a new category of registered unlicensed individuals who perform water conditioning installation and authorized the Board to adopt rules for the registration of these unlicensed individuals.¹ Additionally, the Minnesota Legislature newly granted the Board authority to regulate continuing education requirements for all registered unlicensed individuals.²

There are two notable changes in the proposed rule amendments. First, the Board’s proposed amendments provide the requirements for the registration of unlicensed water conditioners (registration of unlicensed plumbers is already in rule). The Board anticipates that some registered unlicensed individuals will apply their work experience to pursue licensure while some registered unlicensed individuals will not. The proposed rules facilitate the Department’s tracking of individuals’ work experience to determine when individuals have obtained sufficient experience to qualify them to take the appropriate licensing exam. Second, the proposed rules require minimal continuing education hours for registered unlicensed individuals to ensure they stay current with industry and Plumbing Code changes.

The Board published a Request for Comments on October 30, 2017. In response to the Request for Comments, the Board received one comment that requested that the Board support legislation that would change the licensing requirements for backflow prevention assembly rebuilders in Minnesota. The Board received 61 comments about the continuing education requirements for registered unlicensed plumbers.³ The Board addressed those concerns at Board meetings and in the rule-by-rule analysis below.⁴

The Minnesota Department of Labor and Industry (“Department”) is required to provide support to the Board, including for rulemaking.⁵

¹ See Minn. Laws, [2017 c. 94 art 2 s 14](#). This law became effective August 1, 2017.

² See Minn. Laws, [2017 c. 94 art 2 s 8](#). This law became effective August 1, 2017.

³ All comments submitted in response to the Request for Comments are available here <http://www.dli.mn.gov/sites/default/files/pdf/4716-comment.pdf>.

⁴ See Board meeting minutes for March 12, 2018; June 12, 2018, August 28, 2018 at <http://www.dli.mn.gov/about-department/boards-and-councils/plumbing-board>

⁵ See [Minn. Stat. § 326B.435, subd. 2\(c\) \(2018\)](#).

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 the Department of Labor and Industry, 443 Lafayette Road North, Saint Paul, MN 55155-4342, or by telephone 651-284-5006, or email to: dli.rules@state.mn.us.

STATUTORY AUTHORITY

The Board's statutory authority to adopt rules related to licensure, certification, or registration is stated in *Minnesota Statutes*, section 326B.435, subd. 2(a)(5), which authorizes the Board to:

adopt rules that regulate the licensure, certification, or registration of plumbing contractors, journeyworkers, unlicensed individuals, master plumbers, restricted master plumbers, restricted journeyworkers, 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.

Minnesota Statutes, section 326B.435, subd. 2(a)(6) was amended in 2017 to authorize the Board to adopt rules regulating continuing education for registered unlicensed individuals. Specifically, the Board has the authority to “adopt rules that regulate continuing education for individuals licensed as master plumbers, journeyworker plumbers, restricted master plumbers, restricted journeyworker plumbers, registered unlicensed individuals, water conditioning masters, and water conditioning journeyworkers, and for individuals certified under sections 326B.437 and 326B.438.”⁶ While the Board's authority to regulate continuing education for licensed individuals is not new, the authority to regulate continuing education for registered unlicensed individuals is new.

Minnesota Statutes, section 326B.47, subd. 3, authorizes the Board to prescribe rules for the registration of unlicensed individuals.⁷ The Board has been regulating registered unlicensed individuals who perform plumbing as a different classification than plumber's apprentices since 2010.⁸

⁶See [Minn. Stat. § 326B.435, subd. 2 \(2018\)](#).

⁷See [Minn. Stat. § 326B.47, subd. 3 \(2018\)](#).

⁸ See [Minn. Laws, 2010 c 280 s 27](#) at <https://www.revisor.mn.gov/laws/2010/0/280/> and [Minn. R. part 4716.0050](#).

Minnesota Statutes, section 326B.555, which was enacted in 2017, creates a new category of registered unlicensed individuals to perform water conditioning installation and authorizes the Board to adopt rules for the registration of these unlicensed individuals.⁹

Because specific portions of the Board’s rulemaking authority was new in 2017, effective August 1, 2017, those portions are subject to the 18-month time limit in *Minnesota Statutes*, section 14.125. The Board will publish a notice of intent to adopt rules or a notice of hearing within 18 months of the effective date.

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 SONAR. Paragraphs (1) through (8) below quote 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 proposed amendments to the rules would likely affect individuals and contractors currently licensed, certified or registered in Minnesota under Chapter 4716; individuals and contractors who would like to be licensed, certified or registered under Chapter 4716; individuals who perform water conditioning installation but are not licensed, certified or registered; providers of continuing education courses; and the general 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

Although the Board has the authority to adopt plumbing licensing rules, it does not implement or enforce the licensing rules. The Department currently administers and enforces the licensing rules. Any additional costs the Department incurs to implement and enforce the proposed rules will be offset by additional registration fees collected from registered unlicensed individuals. The Department does not anticipate increased costs to administer the rule except for the newly regulated individuals. The costs to enforce registration of the newly regulated individuals will be offset by the registration fees.

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

The Board has determined there is no less costly or less intrusive method for achieving the purposes of the proposed rules. The proposed rule utilizes existing infrastructure for licensing,

⁹See Minn. Laws, [2017 c 94 art 2 s 14](https://www.revisor.mn.gov/laws/2017/0/Session+Law/Chapter/94/) at <https://www.revisor.mn.gov/laws/2017/0/Session+Law/Chapter/94/>. This law became effective August 1, 2017.

registration and enforcement. The proposed rules are anticipated to be less intrusive and reduce some costs of compliance compared to the current rule. For example, licensed plumbers may take all of the required continuing education using electronic media. Also, a one-day continuing education course on the Plumbing Code satisfies the minimum Code-related continuing education requirement instead of a two-day course on the Plumbing Code (or 1.5-day course) because the minimum requirement for Code-related continuing education has been changed from 12 hours to 8 hours.

(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 alternative methods for achieving the purpose of the proposed rule were identified. The Board determined that the existing requirements and procedures used have been successful and should be maintained. The same or similar procedures are used in other similar industries as well.

(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 rule are anticipated to be minimal. Registered unlicensed individuals who perform water conditioning work will be subject to the same \$14 initial registration fee and \$19 renewal registration fee that registered unlicensed plumbers and electricians are currently required to pay. Other regulated parties under this proposed rule are anticipated to see the same or lower costs to comply with the proposed rule.

(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 rule are fewer avenues for unlicensed individuals to qualify for journeyworker licensing exams and fewer work options for individuals seeking employment in the water conditioning industry, which could limit the pool of qualified workers available to businesses that provide water conditioning services to the public.

Another consequence of not adopting the proposed rule is that the Board would lose its statutory authority to regulate certain parties. The legislature would then need to pass new legislation, which may have costs associated with it. Without rules to address the newly regulated party in statute, there would be confusion for anyone interested in hiring or becoming a registered unlicensed water conditioner.

(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 that apply.

(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . ‘[C]umulative 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.

The proposed rules cover areas that are not addressed by federal law or other Minnesota state laws. Therefore, this consideration is not applicable to this proposed rule.

PERFORMANCE-BASED RULES

The Board carefully considered the directives of the legislature requiring performance-based standards to the extent possible. Because this is a licensing rule and not a code, performance-based and prescriptive are not applicable. However, to the extent possible, the Board considered and discussed performance and prescriptive elements. The proposed rules are prescriptive in that they establish a specific number of continuing education hour requirements for registered unlicensed individuals. The proposed rules are as performance-based as possible by allowing flexibility in the method and topics of continuing education while remaining clear and enforceable.

ADDITIONAL NOTICE

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a November 1, 2018 Order on Review of Additional Notice Plan and Dual Notice by Administrative Law Judge Eric L. Lipman.

Our Notice Plan also includes giving notice required by statute. We will mail or e-mail the Notice of Intent to Adopt to everyone who has registered to be on the Department’s rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 14.116. We will also e-mail the rules and Notice of Intent to Adopt to the following organizations and trade groups:

- 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 Water Quality Association (MWQA)
- s. Minnesota Society of Professional Engineers (MNSPE)

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

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Board consulted with Minnesota Management and Budget (MMB). The Board did this by sending MMB copies of the documents that we sent to the Governor’s Office for review and approval on the same day we sent them to the Governor’s office. We did this before publishing the Notice of Intent to Adopt. The documents included: the Governor’s Office Proposed Rule and SONAR Form; the proposed rules; and the near-final SONAR. MMB Executive Budget Officer Marianne Conboy responded, in part, as follows in a letter dated October 31, 2018: “There appears to be no direct fiscal impact or fiscal benefit from this rule amendment to local units of government.”

Because local governments are not actively engaged in the regulation of businesses and individuals in the plumbing and water conditioning industry, the financial impact to them is minimal. To the extent that local governments inspect the installation of water conditioning systems, the proposed rules might improve the inspection process by enhancing the knowledge of individuals working in the industry.

The Board will submit a copy of the cover correspondence and the response received from MMB to OAH at the hearing or with the documents it submits for Administrative Law Judge (“ALJ”) review.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

Minnesota Statutes, section 14.128 requires agencies 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. The Board has determined that no local government will have to adopt or amend an ordinance or other regulation to comply with the proposed rule. Plumber and water conditioner licensing and registration is enforced at the state level so no local government or municipality will be required to adopt or amend a local ordinance as a result of the proposed rule.

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.¹⁰ The Board asked the public to submit comments specifically regarding whether the cost of complying with the rule in the first year after the rule takes effect will exceed \$25,000 in the Request for Comments published on October 30, 2017. The Board did not receive any comments addressing this issue. 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 proposed rule amendments are anticipated to keep the cost of complying with the rule the same or less with the exception of the continuing education requirements for registered unlicensed individuals (water conditioners and plumbers).

Small cities are not anticipated to incur any costs. It is not anticipated that a small city would employ a registered unlicensed individual. Therefore, even if there are minimal increased costs for registered unlicensed individuals or employers of registered unlicensed individuals, small cities will not be affected. Furthermore, because plumber and water conditioner licensing is administered and enforced at the state level, it is not anticipated that any city, including a small city, would incur any costs to comply with the proposed rule from an administrative perspective.

Small businesses already have to track the hours worked by their individual employees so there is no additional cost anticipated in the normal course of maintaining employment records.¹¹

The rule does not require employers to pay the registration costs or continuing education costs. However, if the employer chooses to pay the registration cost, assuming all possible employees are registered unlicensed individuals, the maximum annual cost for a small business would be $\$19 \times 49 \text{ employees}^{12} = \931 , which is well below the \$25,000 threshold.¹³

The average cost for a two-hour continuing education course is \$ 49.00.¹⁴ Again, the cost for two hours of continuing education may be paid by the registrant or the employer. If the employer chooses to pay this cost, again assuming the maximum number of employees are registered unlicensed individuals, the maximum annual cost, on average, would be $\$ 49.00 \times 49 \text{ employees} = \$ 2,401.00$. This total is again well below the \$25,000 threshold. The combined total of annual

¹⁰ A small business is defined as “any one business that has less than 50 full-time employees” and a small city is defined as “any one statutory or home rule charter city that has less than ten full-time employees.” [Minn. Stat. § 14.127, subd. 1 \(2018\)](#).

¹¹ See [Minn. Stat. § 326B.47, subd. 1\(c\) \(2018\)](#).

¹² At least one employee would have to be a licensed journeyworker or master plumber. This example is for illustrative purposes only. A small business is unlikely to have 49 registered unlicensed individuals.

¹³ The initial registration fee is currently set at \$14 per registrant and the annual renewal fee is \$19. For illustrative purposes, the estimate uses only the renewal fee, which is the higher of the two fees.

¹⁴ See Attachment A.

registration fees and continuing education costs is approximately \$ 3,332.00, which is well below the \$25,000 threshold.

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. Richard Jacobs, Plumbing Board Chair, will testify about the Board's interest in amending the code.
2. Mr. Charlie Durenberger, Assistant Director, CCLD, will testify about the technical aspects of the proposed amendments.
3. Other Board members or Department of Labor and Industry staff, if necessary.

RULE-BY-RULE ANALYSIS

4716.0010 DEFINITIONS

The proposed rule amendment adds a subpart 6 to codify the term, "Registered unlicensed plumber." Although registered unlicensed individuals who perform and assist in plumbing have been regulated under Minn. Stat. § 326B.47 since 2010, the proposed rule amendment formally names and clarifies this category of individuals.¹⁵

4716.0020 EXAMINATION AND LICENSING OF PLUMBERS

Subpart 1. Examinations.

The proposed rule amendment deletes language that states two specific times of the year in which journeyworker and master plumber licensing exams will be held. The Department began offering journeyworker and master plumber licensing examinations on a weekly basis several years ago in an effort to increase the availability of exams to those seeking licensure. As result, the current rule requirement that exams be given in March and September is outdated and no longer necessary. The proposed rule amendment is necessary and reasonable because it modernizes the rule part and deletes unnecessary language.

Subpart 1(A)(1)

The proposed rule amendment clarifies that an applicant for the master plumber examination must have worked as a licensed journeyworker plumber for at least one year before he or she can qualify to take the master plumber license examination. The current language that an applicant for the master plumber examination be a licensed Minnesota journeyworker plumber license and have "five years of practical plumbing experience" has the same meaning because four years of practical plumbing experience is required to qualify for the journeyworker plumber examination and the fifth year comes the year after an individual becomes a licensed journeyworker plumber. The proposed rule states that requirement more clearly.

¹⁵ See [Minn. Laws, 2010 c 280 s 27](https://www.revisor.mn.gov/laws/2010/0/280/) at <https://www.revisor.mn.gov/laws/2010/0/280/>

Subpart 1(B)(1)

The proposed rule amendment clarifies the distinction between a plumber’s apprentice defined in Minn. Stat. § 326B.42, subd. 6, and the registered unlicensed plumber, which is a newly formalized term.¹⁶ See 4716.0010 analysis above. The requirement is substantively the same but clarifies the two categories of applicants and clarifies that the four years of practical plumbing experience must be recorded as required in Minn. Stat. § 326B.47, subd. 1(c).

Subp. 2. Experience

Subpart 2(E)

The proposed rule amendment corrects the subitems referenced here to correspond with the proposed rule below.

Subpart 2(E)(1)

The proposed rule amendment adds the word “plumbing” before “work” to clarify that the qualifying hours must be obtained performing plumbing work, as described in the list (a) through (c).

Subpart 2(E)(3)

The current rule requires applicants who are licensed restricted journeyworker plumbers or licensed restricted master plumbers to have completed the entire two years of practical plumbing experience within the four years before the applicant takes the examination. The proposed rule amendment deletes subitem 3 because removing this timeframe encourages licensed restricted journeyworker plumbers and licensed restricted master plumbers to take the regular licensed journeyworker plumber and licensed master plumber examinations. The proposed rule amendment broadens the pool of possible applicants. A shortage of skilled laborers is anticipated according to industry experts and economists.¹⁷ The proposed rule amendment is necessary and reasonable because the applicants are still subject to examination to ensure competent licensed plumbers.

Subpart 2(F)

The proposed rule amendment deletes reference to plumber’s apprentice and replaces it with registered unlicensed plumber because only registered unlicensed plumbers will have a situation subject to subitems (1) and (2) that follow. Because a registered plumber’s apprentice, as defined in Minn. Stat. § 326B.42, subd. 6, is part of a formal, approved apprenticeship, subitems (1) and (2) are moot issues to them. The proposed rule amendment also corrects the subitems referenced here to correspond with the proposed rule below. The proposed rule amendment is necessary and reasonable because the distinction between a registered plumber’s apprentice and registered unlicensed plumber should be clear.

¹⁶ Minn. Stat. § 326B.42, subd. 6 (2018) provides a definition of “plumber’s apprentice and defines it as “any individual who is employed in the practical installation of plumbing under an apprenticeship agreement approved by the department under section 178.07.”

¹⁷ See <https://mn.gov/deed/data/data-tools/employment-outlook/>; <https://mn.gov/deed/newscenter/publications/review/june-2018/job-outlook-2026.jsp>; <https://www.bls.gov/ooh/construction-and-extraction/plumbers-pipefitters-and-steamfitters.htm>; and <http://www.startribune.com/worse-than-dating-twin-cities-builders-go-all-out-to-find-workers/432561123/>.

Subpart 2(F)(1)

The proposed rule amendment adds the word “plumbing” before “work” to clarify that the qualifying hours must be obtained performing plumbing work, as described in the list (a) through (c).

Subpart 2(F)(2)

The proposed rule amendment deletes the reference to subitem (3) because subitem (3) is deleted in the proposed rule. Again, the reference to “plumber’s apprentice” is deleted and “unlicensed plumber” is added because only registered unlicensed plumbers will have a situation subject to subitems (1) and (2) that follow.

The proposed rule amendment provides for alternate options for an applicant to have obtained the practical plumbing experience as listed in items (a) through (c). The alternate options are substantively the same as the language that is deleted in subpart 2(F)(3). The language was removed from subitem (3) and moved to subitem (2) because combining subitems (2) and (3) into one subitem, and removing the timing requirements in subitem (3), clarifies the two avenues through which an applicant may obtain the practical plumbing experience. That is, the practical experience must be obtained as a registered unlicensed plumber or through one of the ways listed in (2)(a) through (c). There is minimal substantive change to subitems (2) and (3) as the intent is to clarify the different acceptable ways to obtain the practical plumbing experience.

Subpart 2(G)

The proposed rule amendment corrects the reference numbering to reflect the proposed amendments. For example, the reference to subitem (3) is replaced with subitem “(2), units (a) to (c)” because the proposed rule amendment moves the content in subitem (3) to subitem (2), units (a) to (c). The word “master” is added and “or plumbing contractor” is deleted because a plumbing contractor is a business entity and a human being must provide the certification. The reference to “plumber’s apprentice” is deleted and “registered unlicensed plumber” is added to be consistent with the proposed amendments above.

4716.0040 EXPIRATION OF LICENSES

Subpart 1. Issuance and expiration

The proposed rule amendment provides consistency for all journeyworker licensees and master licensees and aligns the rules with Minnesota Statutes.¹⁸ The proposed rule amendment simplifies the renewal of journeyworker plumber and master plumber licenses. All journeyworker plumber licenses will expire on December 31 of odd-numbered years rather than on anniversary dates of license issuance. All master plumber licenses will expire on December 31 of even-numbered years. The Department can provide more efficient administration and enforcement of the licensing rules, thereby keeping enforcement costs, and therefore license fees, down. Individual licensees and the Department benefit from the proposed change.

The renewal window for restricted journeyworker and restricted master plumbers was changed from 12 months to within “two years of the license expiration” to grant restricted license holders

¹⁸ See [Minn. Stat. § 326B.49, subd. 1\(b\) \(2018\)](#). This statute was amended in 2016. See [Minn. Laws, 2016 c 189 art 8 sec 3](#).

additional time to renew their license before permanently forfeiting their restricted plumber license. Because failing to renew timely results in permanent forfeiture, it is reasonable to grant license holders more than 12 months to renew. The two-year time period to renew is consistent with the renewal period for licensed journeyworker and master plumbers. Restricted journeyworker and restricted master plumber licenses are relatively few in number and are a holdover from the transition from no licensure in cities with populations less than 5,000 to statewide plumber licensing in 2005. Restricted plumber licenses were granted to individuals who were performing plumbing at the time of the transition and who performed plumbing work in municipalities with a population under 5,000. A plumber holding a restricted license may not perform plumbing work in municipalities with a population over 5,000. No new restricted plumber licenses have been granted since the transition period. Once a restricted license is forfeited, it cannot be reinstated or renewed.

Subpart 2. License renewals

The proposed rule amendment clarifies that license renewal applications must be submitted by December 31 of the year in which the license expires to be a timely renewal.

The proposed rule amends the timeframe in which a restricted journeyworker or restricted master plumber must pay the past due renewal fee to coordinate with the two year timeframe proposed in subpart 1 above.

4716.0050 REGISTRATION OF PLUMBER'S APPRENTICE

The proposed rule amends the title of this rule part to "REGISTRATION OF REGISTERED UNLICENSED PLUMBER." The proposed rule amendment aligns the title with the title change to Minn. Stat. § 326B.47, which was changed from "Plumber's Apprentices" to "Unlicensed Individuals" in 2010.¹⁹ This amendment is reasonable because chapter 4716 regulates registered unlicensed plumbers but not registered plumber's apprentices who are part of a formal apprenticeship program. The formal distinction between a plumber's apprentice and a registered unlicensed plumber is relatively new.²⁰ Rule titles are not enforceable but the title change adds clarity to the rule part particularly since the rule specifically states that it does not apply to registered plumber's apprentices.

Subpart 1. Scope.

The proposed rule amendment updates and corrects this subpart. The proposed rule amendment updates the word "shall (not)" with "does (not)" because "shall (not)" is not grammatically correct. Also, the change to "does (not)" modernizes the language and is plain language. The proposed rule amendment corrects the referenced statute cite. The current rule refers to "Minnesota Statutes, section 326B.47, subdivision 1, clause (1)" however, there is no such clause (1). The correct cite format is Minnesota Statutes, section 326B.47, subdivision 1, *paragraph (a)*. Emphasis added. The proposed rule amendment changes the plural "plumber's apprentices" to singular for consistency with the rest of the rule chapter.

¹⁹ See [Minn. Laws, 2010 c 280 s 27](https://www.revisor.mn.gov/laws/2010/0/280/) at <https://www.revisor.mn.gov/laws/2010/0/280/>

²⁰ *Id.*

Subp. 2. Registration requirements

The proposed rule amendments change all “plumber’s apprentice” references to “registered unlicensed plumber.” Plumber’s apprentices are regulated under the formal, approved apprenticeship agreement subject to Minnesota Statutes, chapter 178 and related rule chapters. The proposed rule amendment is necessary and reasonable because it uses terminology that is consistent with Minn. Stat. § 326B.47 and other proposed amendments in this rule chapter.

4716.0091 DEFINITIONS

Subpart 1. Scope.

The proposed rule amendment adds “Subpart 1. Scope” because now that a second subpart is added, it is necessary and reasonable to number and title the subpart. When it was the only subpart in this section, it was not necessary to number and title it.

Subpart 2. Registered unlicensed water conditioner

The proposed rule amendment adds this subpart to establish and define the term, “Registered unlicensed water conditioner.” Although registered unlicensed individuals who perform and assist in plumbing have been regulated under Minn. Stat. § 326B.47 since 2010, registered unlicensed water conditioners is a newly established category of regulated parties per the 2017 legislature.²¹ It is necessary and reasonable to establish and define this terms that identifies the legislature’s newly regulated category of individuals.

4716.0092 LICENSURE

Subpart 1. Water conditioning contractor.

The proposed rule amendment reduces redundant language and thereby provides clarity and consistency with the current Minnesota Statutes 326B.50, subds. 1a and 2a. The proposed rule amendment replaces all references to “water conditioning master or master plumber” with “responsible licensed master” because “responsible licensed master” is a term already defined in Minnesota Statutes 326B.50, subd. 1a and the definition requires the individual to be a “water conditioning master or licensed master plumber.” All the language that the proposed rule amendment deletes is deleted because it is addressed by using the defined term “responsible licensed master.” There is no substantive change to the rule part.

Subpart 3. Water conditioning journeyworker.

The proposed rule amendment adds that, in addition to the six months of practical experience and passing an exam, an applicant for the water conditioning journeyworker license must be a registered unlicensed water conditioner in Minnesota except as permitted in subpart 4, item A, subitem (4). The proposed rule amendment is necessary and reasonable to ensure that the qualifying experience is obtained under proper qualified conditions and is consistent with Minn. Stat. § 326B.555.

Subpart 4. Experience.

Subpart 4 provides specific requirements for the experience needed in subparts 2 and 3. There are no proposed amendments to items A through C. Items D and E are new to provide the

²¹ See Minn. Laws, [2017 c 94 art 2 s 14](https://www.revisor.mn.gov/laws/2017/0/Session+Law/Chapter/94/) at <https://www.revisor.mn.gov/laws/2017/0/Session+Law/Chapter/94/>.

specific experience requirements for registered unlicensed water conditioners and the employer of the registered unlicensed water conditioner and water conditioning journeyworker. The statutory authority to regulate registered unlicensed water conditioners is new. Therefore, this formalized category of regulated individuals is new, thus, the new items in this subpart. Items A through C detail the requirements for other required experiences listed in subparts 2 and 3.

Subpart 4(D)(1)

The proposed rule amendment is new to address the newly formalized category of registered unlicensed water conditioner and what is expected of those applicants. The proposed rule amendment clearly states the requirement (to be a registered unlicensed water conditioner while obtaining the practical water conditioning experience) and clarifies that the exception in Minn. Stat. § 326B.555, subd. 2, applies here. This is necessary and reasonable because it should be clear what is expected of the regulated parties, what other permissions apply to the requirement and is consistent with Minn. Stat. § 326B.555. The exception in Minn. Stat. § 326B.555, subd. 2, grants flexibility to applicants.

Subpart 4(D)(2)

The proposed rule amendment clarifies what is required of the licensed water conditioning master who is responsible for certifying the work performed by the registered unlicensed water conditioner. It is necessary and reasonable to clearly state the requirements. The requirements are reasonable and consistent with the requirements in Minn. R. part 4716.0020, subp. 2, and Minn. R. part 4716.0092, subp. 4(C), while tailored to the water conditioner licensing requirements. The proposed rule amendment is consistent with Minn. Stat. § 326B.555.

Subpart 4(E)(1) and (2)

The proposed rule amendment adds recordkeeping requirements for the employers of water conditioning journeyworkers and registered unlicensed water conditioners. The proposed rule amendment requires the employers to record the practical water conditioning experience worked by each employee and to maintain those records for at least six years. The registered unlicensed water conditioner needs this record of experience to qualify as an applicant for the journeyworker exam and the journeyworker needs the recorded experience to qualify for the master exam. It is necessary and reasonable to require the employer to make and maintain these records and such requirement is consistent with Minn. Stat. § 326B.555. It is necessary and reasonable for the employer to maintain these records for six years after the employee's last recorded experience because it gives applicants time to take the journeyworker exam after completing the training and for the journeyworker to take the master exam. There are a variety of reasons why an applicant might be delayed in taking an examination. For example, a medical incident or family emergency that delays the applicant from taking the examination. Six years balances flexibility for the applicant with minimal burden for the employer. Six years is consistent with the record retention requirement for registered unlicensed plumbers in part 4716.0020, subp. 2(G)(2).

4716.0093 UNLICENSED WATER CONDITIONER REGISTRATION

Subpart 1. Registration requirements

The proposed rule amendment is new to establish the requirements and qualifications to become a registered unlicensed water conditioner. For example, the proposed rule amendment requires a person to submit an application and fee to the Department annually to become a registered unlicensed water conditioner. Registrations are effective from July 1 through June 30 of the following year and late renewals require payment of a late fee. This date range is consistent with Minn. Stat. § 326B.555 and the registered unlicensed plumber registration dates in Minn. R. part 4716.0050, subp. 2. This is necessary and reasonable because having a set registration period makes administration of and compliance with the rule easier and more efficient for both the Department who enforces the rule and the registrants complying with the code. This efficiency keeps licensing fees down.

The proposed rule amendment establishes reasonable qualifications in items A and B that are consistent with Minn. Stat. § 326B.555 and other similar rules. Specifically, item A requires a registered unlicensed water conditioner to be at least 18 years of age or a high school graduate, though individuals as young as 16 may register and perform work if they are supervised by the individual's parent. Item B requires applicants for an unlicensed water conditioner registration to provide to the Department certain personal information, including Social Security number as required by Minn. Stat. § 270C.72.²² These qualifications are consistent with the qualifications for registered unlicensed plumbers in Minn. R. part 4716.0050, subp. 2, and Minn. Stat. § 326B.555. This information is necessary and reasonable for the Department to be able to verify individual identities and is consistent with Minnesota Statutes.

4716.0205 REQUIREMENTS

Subpart 1. Continuing education; content.

Plumbing licensees are currently required to take 16 hours of approved continuing education each two-year license period. The proposed rule amendment does not change that total number of required hours.

Subpart 1(A)

The proposed rule amendment lowers the minimum number of continuing education hours that must pertain to the Plumbing Code from twelve to eight and allows the remainder of the required hours to pertain to the Plumbing Code or technical topics related plumbing installations and equipment, Minnesota Rules chapter 4716, the Minnesota State Building Code, or the Plumbing and Water Conditioning sections of Minnesota Statutes, chapter 326B. The proposed rule amendment changes only the minimum number of hours that must pertain to the Plumbing Code and allows a licensee to obtain all continuing education hours on the Plumbing Code. This is necessary and reasonable because eight hours of Plumbing Code instruction will be sufficient for some veteran licensed plumbers while newer licensed plumbers might benefit from more Plumbing Code instruction hours. The proposed rule amendment allows more flexibility while maintaining a high standard of qualifications. The proposed rule amendment is consistent with the state regulatory policy in Minn. Stat. § 14.002 that encourages agencies to develop rules that

²² See [Minn. Stat. § 270C.72 \(2018\)](#).

“emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party.”²³ Because knowledge of the Plumbing Code is essential to safe plumbing practices, and the Plumbing Code changes, it is reasonable to require licensed individuals have a minimum number of continuing education hours on the Plumbing Code.

The proposed rule amendment corrects the reference to Minnesota Statutes, sections 326B.41 to 326B.49 to Minnesota Statutes, sections 326B.41 to **326B.59**, emphasis added, because the range to 326B.49 does not include the water conditioning sections, which are sections 326B.50 through 326B.59. This also provides additional flexibility in the topics in which licensed plumbers may get the required continuing education hours.

The proposed rule amendment allows licensed individuals to tailor their continuing education hour topics to their needs while also maintaining high quality continuing education because all continuing education courses must be approved, pursuant to Minnesota Rules, parts 4716.0200 through 4716.0210.

The proposed rule amendment eliminates the current four-hour limit on continuing education hours obtained by any electronic media. That is, online continuing education hours are currently limited to four of the sixteen. The proposed rule amendment is necessary and reasonable because some licensed plumbers in outstate Minnesota have some challenges with accessing in-person continuing education courses that metro area plumbers do not have. For example, there are fewer in-person course offerings in outstate Minnesota. Allowing all sixteen continuing education hours to be obtained online modernizes the requirement and recognizes the changes and improvements in technology. Electronic media standards are established in Minnesota Statutes, sections 326B.098 to 326B.099. The online courses must also be approved pursuant to Minnesota Rules, parts 4716.0200 through 4716.0210 like any other in-person course. The proposed rule amendment is consistent with the state regulatory policy in Minn. Stat. § 14.002 that encourages agencies to develop rules that “emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party.”

These changes are intended to make it easier and less costly for licensees to obtain the continuing education required to maintain licensure while maintaining quality education. Continuing education requirements for regulated parties are necessary and reasonable to ensure competency and recognizes industry changes in the interest of public health.

Subpart 1(B)

Licensed water conditioning journeyworkers and masters must obtain four hours of continuing education hours per two-year licensing period. The proposed rule amendment deletes unnecessary language and adds the requirement that two of the four required continuing education hours must pertain to the Plumbing Code and the remaining two hours may pertain to the Plumbing Code or an existing list of other relevant topics. The proposed rule amendment maintains the same number of hours as the current rule and maintains flexibility while ensuring licensed water conditioners stay current with the Plumbing Code in addition to technical topics. It is necessary and reasonable to require licensed water conditioners to take two hours of continuing education on the Plumbing Code because their work is subject to and governed by the

²³ See [Minn. Stat. § 14.002 \(2018\)](#).

Plumbing Code. Because the scope of their work is not as broad as licensed plumbers, it is reasonable that the total number of required continuing education hours is fewer than licensed plumbers. Correspondingly, the required minimum number of continuing education hours on the Plumbing Code is also fewer than what is required for licensed plumbers.

The proposed rule amendment adds that the continuing education hours may be obtained online, subject to the requirements in Minn. Stat. §§ 326B.098 to 326B.099. This proposed amendment is consistent with the proposed amendment in subpart 1(A) above.

Subpart 1(C)

The proposed rule amendment creates a new requirement for registered unlicensed plumbers and water conditioners to take two hours of continuing education each year as a condition of renewing their registration. Registered unlicensed plumbers must take two hours of continuing education on the Plumbing Code because the range of work they may perform is broad and includes the entire scope of the Plumbing Code. Registered unlicensed water conditioners must take one hour of continuing education on the Plumbing Code and the other hour of continuing education may be on the Plumbing Code or a technical topic related to water conditioning installation. The scope of the work of a registered unlicensed water conditioner is limited to water conditioning so they do not work with the entire Plumbing Code.

For many registered unlicensed plumbers and water conditioners, the continuing education requirement is absorbed into their training toward qualifying for the journeyworker exam in their respective field. For other registered unlicensed plumbers and registered unlicensed water conditioners who do not intend to take the journeyworker exam in their respective field, this requirement ensures they stay current with industry practices and the Plumbing Code.

For both registered unlicensed plumbers and water conditioners, the continuing education hours may be taken online. This requirement will enhance registrants' knowledge and understanding of the Plumbing Code and other information relevant to their work. While field work is important, there are tables, calculations and backflow protection of water supply system in the Plumbing Code that industry professionals must be aware of and learn about. A continuing education class is a setting conducive to learning about certain aspects of the Plumbing Code.

Similarly, registered unlicensed electricians have been required to obtain two hours of continuing education every renewal period since 2009.²⁴ It is necessary and reasonable to require a regulated party to obtain some continuing education to maintain their registration to ensure competence in the interest of public health.

Subpart 1(D) and (E)

The proposed rule amendment renumbers these paragraphs to reflect the new paragraphs added above. There are no substantive changes.

²⁴ See [Minn. R. 3800.3602 \(2018\)](#). See also https://www.revisor.mn.gov/state_register/34/15/.

CONCLUSION

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

November 13, 2018



Richard Jacobs
Plumbing Board Chair

This Statement of Need and Reasonableness was made available for public review on November 13, 2018.

Attachment A

2-hour Continuing Education Average Costs

Plumbology*	\$60.00
Metro Testing & Plumbing**	\$50.00
TradesmanCE.com (At Your Pace)*** - electrical	\$36.00
Total	\$146.00
Average	\$48.67

Continuing Education Average Cost-Per-Hour

	# of hours	Total cost	Average cost per hour
Plumbology*	8	\$130.00	\$16.25
Plumbology	4	\$85.00	\$21.25
Plumbology	2	\$60.00	\$30.00
Metro Testing & Plumbing**	8	\$150.00	\$18.75
Metro Testing & Plumbing	6	\$125.00	\$20.83
Metro Testing & Plumbing	2	\$50.00	\$25.00
TradesmanCE.com (At Your Pace)***	4	\$80.00	\$20.00
TradesmanCE.com (At Your Pace)	2	\$36.00	\$18.00
MyPlumbingTraining.com****	8	\$125 (incl. lunch)	\$15.63
MyPlumbingTraining.com - apprentices	8	\$20.00	\$2.50
Total		\$861.00	\$18.82

*<http://www.plumbologymn.com/register>

**<https://metrotesting.net/classes/>

***<https://www.tradesmance.com/minnesota-plumbing-continuing-education>

****https://myplumbingtraining.com/onsite_courses