

Plumbing Board
c/o Department of Labor and Industry
443 Lafayette Road North
St. Paul, MN 55155-4344
www.dli.mn.gov

Plumbing Board Request for Action

PRINT IN INK or TYPE

NAME OF SUBMITTER

Alex Bartley

PURPOSE OF REQUEST (check all that apply): New Code
 Code Amendment Repeal of an existing Rule

The Minnesota Plumbing Code (MN Rules, Chapter 4714) is available at <http://www.dli.mn.gov/CCLD/PlumbingCode.asp>.

Specify the purpose of the proposal: (If recommendation for code change for fixture, appurtenance, material, or method, check all that apply)

Appurtenance (e.g., water conditioning equipment) Test Method

Chapter 2: Revise "Potable Water" definition.

Other (describe)

Chapter 6: Materials, modify Lead Content Language

Does your submission contain a Trade Secret? Yes No

If Yes, mark "**TRADE SECRET**" prominently on each page of your submission that you believe contains trade secret information. Minnesota Statutes, section 13.37, subdivision 1(b), defines "trade secret" as follows:

"Trade secret information" means government data, including a formula, pattern, compilation, program, device, method, technique or process (1) that was supplied by the affected individual or organization, (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

Note that, although "trade secret" information is generally not public, the Board and its committees may disclose "trade secret" information at a public meeting of the Board or committee if reasonably necessary for the Board or committee to conduct the business or agenda item before it (such as your request.) The record of the meeting will be public.

Describe the proposed change. The Minnesota Plumbing Code (Minnesota Rules Chapter 4714) is available via the World Wide Web at <http://www.revisor.leg.state.mn.us/arule/4714/>

NOTE:

- Please review the Minnesota Plumbing Code and include all parts of the Code that require revision to accomplish your purpose.
- The proposed change, including suggested rule language, should be *specific*. If modifying existing rule language, underline new words and ~~strike through deleted words~~. Please list all areas of the Minnesota Plumbing Code that would be affected.

Description of proposed changes: Requesting to amend MN Rules 4714.0604 Materials with modified 2018 UPC language for Lead Content. In addition, proposing to revise the definition for potable water in MN Rules 4714.0218 Terms Defined Beginning with P. References to "water for human consumption" have been removed and replaced with "potable water".

This request replaces the proposed repealing of MN Rules 4714.0604 Materials in RFA-PB0114. This request is in response to RFA-PB0134 prepared by MDH, which was withdrawn.

See proposed rule language on the next page.

4714.0218 TERMS DEFINED BEGINNING WITH P.

UPC section 218.0 is modified by amending the following definitions:

Plumbing System - Includes all potable water, building supply, and distribution pipes; all plumbing fixtures and traps; all drainage and vent pipes; and all building drains and building sewers, including their respective joints and connections, devices, receptors, and appurtenances within the property lines of the premises and shall include potable water piping, potable water treating or using equipment, and nonpotable water piping serving plumbing fixtures.

Potable Water - Water that is ~~satisfactory for drinking, culinary, and domestic purposes and~~ intended for drinking, bathing, showering, hand washing, teeth brushing, food preparation, dishwashing, and maintaining oral hygiene, which meets the requirements of the Health Authority.

Private Sewage Disposal System - A subsurface sewage treatment system designed for use apart from a public sewer as regulated under the rules administered by the Pollution Control Agency.

4714.0604 MATERIALS.

UPC section ~~604.11-604.2~~ is amended to read as follows:

~~604.11 604.2~~ Lead Content. ~~Water pipe and fittings with a lead content which exceeds a weighted average of 0.25 percent in the wetted surface material, as established in the Safe Drinking Water Act, section 1417(d), shall be prohibited in piping systems used to convey potable water. The maximum allowable lead content in pipes, pipe fittings, plumbing fittings, and fixtures intended to convey or dispense potable water shall be not more than a weighted average of 0.25 percent with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures. For solder and flux, the lead content shall be not more than 0.2 percent where used in piping systems that convey or dispense potable water.~~

604.2.1 Exceptions.

Flush valves, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are 2 inches (50 mm) in diameter or larger shall have a maximum of 8 percent lead content.

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RFA File No. PB0137	Date Received by DLI 5.30.2019	Dated Received by Committee	Date Forwarded to Board
Title of RFA	By:		

Committee Recommendation to the Board: Accept Reject Abstain

Board approved as submitted: Yes No Board approved as modified: Yes No

This material can be made available in different forms, such as large print, Braille or audio. To request, call 1-800-342-5354.

Need and Reasons For the Change. Thoroughly explain the need and why you believe it is reasonable to make this change. During a rulemaking process, the need and reasonableness of all proposed rule changes must be justified; therefore, a detailed explanation is necessary to ensure the Board thoroughly considers all aspects of the proposal.

“Potable Water” and “water for human consumption” are intended to mean the same thing, but are not clearly defined as such in MN Rules. “Potable Water” is defined in our amended MN Rules 4714.0218 as “Water that is satisfactory for drinking, culinary, and domestic purposes and that meets the requirements of the Health Authority.” “Water for human consumption” is not currently defined in MN Rules, but human consumption is defined in the SDWA (the SDWA is administered in the state by the Health Authority) as “drinking, bathing, showering, hand washing, teeth brushing, food preparation, dishwashing and maintaining oral hygiene. We are proposing aligning the definitions of potable water and water for human consumption for the following reasons:

- The use of “domestic purposes” in the current potable water definition is unclear and may exclude water supplies used for human consumption or include water supplies not used for consumption, depending on the reading.
- 2018 UPC Language for lead content is not clear, and needs revision. Exception (1) is redundant and it is unclear that the higher lead content allowed in section 604.2.1 as-written in the 2018 UPC applies to fixtures in Exception (2). Defining “Water for human consumption” has also been a sticking point for the board, while “Potable water” is already defined to standards of the Health Authority. The term “domestic purposes” used in the current “Potable Water” definition is not clear in the current MN Rules definition, and there are existing use-cases defined in Federal Rules to clarify what these purposes are.

As an example, reference the 2018 UPC language below, with revisions made to get the proposed rule language in this request. Strike-through marks denote removing words and underlined words indicate proposed new wording inserted into the rule.

604.2 Lead Content. The maximum allowable lead content in pipes, pipe fittings, plumbing fittings, and fixtures intended to convey or dispense ~~water for human consumption~~ potable water shall be not more than a weighted average of 0.25 percent with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures. For solder and flux, the lead content shall be not more than 0.2 percent where used in piping systems that convey or dispense ~~water for human consumption~~ potable water.

604.2.1 Exceptions:

- ~~(1) Pipes, pipe fittings, plumbing fittings, fixtures, or backflow preventers used for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not used for human consumption.~~
- ~~(2) Flush valves, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are 2 inches (50 mm) in diameter or larger.~~ shall have a maximum of 8 percent lead content.

~~604.2.1 Lead Content of Water Supply Pipe and Fittings. Pipes, pipe fittings, valves, and faucets utilized in the water supply system for non-drinking water applications shall have a maximum of 8 percent lead content.~~

If your product/method standard(s) is not currently listed in both national codes, your Request For Action will not be considered by the Board or its committees, however, you are welcome to present at any Board meeting during the Open Forum section of the Agenda.

The proposal must be accompanied by copies of any published standards, the results of testing, and copies of any product listings, as documentation of the health, sanitation and safety performance of any materials, methods, fixtures, and/or appurtenances. If none are available, please explain:

“Human Consumption” is defined in the Safe Drinking Water Act (SDWA) as the following:

CFR Title 40 Part 141.801 Definitions

[...]
Human consumption means drinking, bathing, showering, hand washing, teeth brushing, food preparation, dishwashing, and maintaining oral hygiene.

[...]
United States v. Midway Heights County Water District, 695 F. Supp. 1072, 1074 (E.D. Cal. 1988) (“Midway Heights”) Verdict includes the following:

[...]
“Human consumption includes drinking, bathing and showering, cooking and dishwashing, and maintaining oral hygiene.”
[...]

Federal Register / Vol. 63, No. 150 /Wednesday, August 5, 1998 references the US v. Midway decision and adds:
[...]
EPA has interpreted the term human consumption to include drinking, bathing⁴, showering, cooking, dishwashing, and maintaining oral hygiene

[...]
“⁴EPA interprets the term “bathing” to mean use of water for personal hygiene purposes in a home, business setting, school, etc. The term “bathing” does not refer to situations such as (1) swimming in an open canal or (2) incidental, casual contact with water from an open canal in connection with outdoor activities such as agricultural work, canal maintenance, or lawn and garden care”
[...]

Attached is Federal Register Volume. 63, No. 153, Page 41941 with highlighted text by the presenter.

Please attach electronic scanned copies of any literature, standards and product approvals or listings. Printed or copyrighted materials, **along with written permission from the publisher to distribute the materials at meetings**, should be sent to the Plumbing Board, c/o Department of Labor and Industry, 443 Lafayette Road No., St. Paul, MN 55155-4344.

Primary reason for change: (check only one)

- | | |
|---|--|
| <input type="checkbox"/> Protect public, health, safety, welfare, or security | <input type="checkbox"/> Mandated by legislature |
| <input type="checkbox"/> Lower construction costs | <input type="checkbox"/> Provide uniform application |
| <input type="checkbox"/> Encourage new methods and materials | <input checked="" type="checkbox"/> Clarify provisions |
| <input type="checkbox"/> Change made at national level | <input type="checkbox"/> Situation unique to Minnesota |
| <input type="checkbox"/> Other (describe) _____ | |

Anticipated benefits: (check all that apply)

- | | |
|--|---|
| <input type="checkbox"/> Save lives/reduce injuries | <input type="checkbox"/> Provide more affordable construction |
| <input checked="" type="checkbox"/> Improve uniform application | <input type="checkbox"/> Provide building property |
| <input type="checkbox"/> Improve health of indoor environment | <input type="checkbox"/> Drinking water quality protection |
| <input type="checkbox"/> Provide more construction alternatives | <input type="checkbox"/> Decrease cost of enforcement |
| <input type="checkbox"/> Reduce regulation <input type="checkbox"/> Other (describe) _____ | |

Economic impact: (explain all answers marked “yes”)

1. Does the proposed change increase or decrease the cost of enforcement? Yes No If yes, explain

2. Does the proposed change increase or decrease the cost of compliance? Yes No If yes, explain
Include the estimated cost increase or decrease, and who will bear the cost increase or experience the cost decrease:

3. Are there less costly or intrusive methods to achieve the proposed change? Yes No If yes, explain

4. Were alternative methods considered? Yes No If no, why not? If yes, explain what alternative methods were considered and why they were rejected.

Yes,

This idea was Alternate 2 referenced in RFA-PB0134, which was withdrawn and not approved by the Rulemaking Committee.

Alternate 1: Define Human Consumption, rejected because adding a definition is more complex and the proposed definition for Potable Water already accomplishes the goal

Alternate 2: Define Water for Human Consumption as "See Potable Water". Withdrawn, did not reduce complexity of rule (See RFA-PB0134).

5. If there is a fiscal impact, try to explain any benefit that will offset the cost of the change. If there is no impact, mark "N/A."

6. Provide a description of the classes of persons affected by a proposed change, who will bear the cost, and who will benefit.

7. Does the proposed rule affect farming operations? (Agricultural buildings are exempt from the Minnesota Building Code under Minnesota Statutes, Section 326B.121.) Yes No If yes, explain

Are there any existing Federal Standards? Yes No If yes, list:

CFR Title 40 Part 141.801 Definitions

[...]

Human consumption means drinking, bathing, showering, hand washing, teeth brushing, food preparation, dishwashing, and maintaining oral hygiene.

Are there any differences between the proposed change and existing federal regulations?

Yes No Not applicable Unknown

If yes, describe each difference & explain why each difference is needed & reasonable.

Minnesota Statutes, section 14.127, requires the Board to determine if the cost of complying with proposed rule changes in the first year after the changes take effect will exceed \$25,000 for any small business or small city. A small business is defined as a business (either for profit or nonprofit) with less than 50 full-time employees and a small city is defined as a city with less than ten full-time employees.

During the first year after the proposed changes go into effect, will it cost more than \$25,000 for any small business or small city of comply with the change? Yes No If yes, identify by name the small business(es) or small city(ies).

Will this proposed plumbing code amendment require any local government to adopt or amend an ordinance or other regulation in order to comply with the proposed plumbing code amendment? Yes No, If yes, identify by name the government(s) and ordinances(s) that will need to be amended in order to comply with the proposed plumbing code amendment.

Additional supporting documentation may also be attached to this form. Are there any additional comments you feel the Committee/Board may need to consider? If so, please state them here:

Information regarding submitting this form:

- Submissions are received and heard by the Committee on an “as received” basis. **Any missing documentation will delay the process, and your proposal will be listed as the date it was received “Complete.”**
- **Submit any supporting documentation to be considered**, such as manufacturer’s literature, approvals by other states, and engineering data electronically to DLI.CCLDBOARDS@state.mn.us. Once your Request For Action form has been received, it will be assigned a file number. Please reference this file number on any correspondence and supplemental submissions.
- **For copyrighted materials that must be purchased from publishers, such as published standards, product approvals or testing data, listings by agencies (IAPMO, ASSE, ASTM, etc.,) you may send just 2 copies, along with written permission from the publisher to distribute the materials at meetings, via U.S. Mail to: Plumbing Board, c/o Department of Labor and Industry, 443 Lafayette Road No., St. Paul, MN 55155-4344.**
- **For materials that must be submitted by U.S. Mail, please include a copy of your “Request For Action” form originally submitted and reference your assigned RFA file number.**

Information for presentation to the Committee and/or Board:

- Limit presentations to 5 minutes or less.
- Be prepared to answer questions regarding the proposal and any documentation.

Information regarding Committee and/or Board function:

- The Plumbing Board or designated committee.

I understand that any committee action is a recommendation to the Plumbing Board and is not to be considered final action.

SUBMITTED BY NAME		FIRM NAME	SUBMITTER’S E-MAIL ADDRESS	
Alex Bartley		MDH – Drinking Water Protection Section	Alex.bartley@state.mn.us	
NAME, PHONE NUMBER & E-MAIL ADDRESS OF PRESENTER TO THE COMMITTEE (if different):				
Alternate 1: Anita Anderson, 218-302-6143, anita.anderson@state.mn.us				
Alternate 2: David Weum, 651-201-4684, david.weum@state.mn.us				
ADDRESS		CITY	STATE	ZIP CODE
625 Robert St N		St. Paul	MN	55155
PHONE	SIGNATURE (original or electronic)		DATE	
651-201-4699	Alex H. Bartley		5/30/2019	

For Assistance or questions on completing this form, contact Cathy Tran, Department of Labor and Industry at 651-284-5898.

For Office/Committee Use Only			
Proposal received completed? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Date Proposer notified of gaps:	Mode of notification (e.g., e-mail)	Date returned to Proposer:	Date materials re-received: