



**MINNESOTA BOARD OF
ARCHITECTURE ■ ENGINEERING ■ LAND SURVEYING
LANDSCAPE ARCHITECTURE ■ GEOSCIENCE ■ INTERIOR DESIGN**

November 26, 2018

Legislative Reference Library
645 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Rules of the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design Governing Registration for Examinations; Revisor's ID Number R-04547

Dear Librarian:

The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design intends to adopt rules governing registration for examinations. We plan to publish a Dual Notice of Intent to Adopt Rules without a Public Hearing Unless 25 or More Persons Request a Hearing in the December 3, 2018 issue of the State Register.

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

If you have questions, please contact me at 651-757-1511.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Andrea Barker', with a long horizontal line extending to the right.

Andrea Barker
Assistant Executive Director

Enclosure: Statement of Need and Reasonableness

Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Governing Registration for Examinations, Minnesota Rules, parts 1800.0400, 1800.0500, 1800.1000, 1800.1100, 1800.1200, 1800.2500, 1800.2700, and 1800.2900.

Revisor's ID Number R-04547

INTRODUCTION AND BACKGROUND INFORMATION

The nature of the proposed rules of the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design ("Board") is to amend its current rules that pertain to applicants for the Fundamentals of Engineering examination and the Architect Registration Examination, computer-based professional examinations offered year-round at approved test centers. The amendments to the rules will allow applicants for these two examinations to apply directly to their respective national council to sit for the examination rather than first seeking Board authorization, removing unnecessary bureaucracy. After the individual passes the examination and completes any other education and experience requirements, the individual will apply to the Board for licensure or certification. The process will be similar to the procedures for licensure as a Landscape Architect or certification as a Certified Interior Designer.

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 Andrea Barker at the Board of AELSLAGID, 85 E. 7th Place, Suite 160, St. Paul, MN 55101, 651-757-1511, Fax: 651-297-5310, and email: andrea.barker@state.mn.us. TTY users may call the Board at (800) 627-3529.

STATUTORY AUTHORITY

This rulemaking is an amendment of rules for which the Legislature has not revised the statutory authority and so Minnesota Statutes, section 14.125, does not apply.

The Board's statutory authority to adopt the rules is stated in Minnesota Statutes section 326.06, which provides:

326.06 General powers and duties of Board.

Each member of the board shall receive a certificate of appointment from the governor, and, before beginning a term of office, shall file with the secretary of state the constitutional oath of office. The board shall adopt and have an official seal, which shall be affixed to all licenses granted; shall make all rules, not inconsistent with law, needed in performing its duties; and shall fix standards for determining the qualifications of applicants for certificates, which shall not exceed the requirements contained in the curriculum of a recognized school of architecture, landscape architecture,

engineering, geoscience, or interior design. The board shall make rules to define classes of buildings with respect to which persons performing services described in section 326.03, subdivision 2, may be exempted from the provisions of sections 326.02 to 326.15, by a finding of no probable risk to life, health, property or public welfare.

Under this statute, 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 classes of persons affected by and benefiting from the proposed amendments to the rules are applicants for the Fundamentals of Engineering (FE) exam and the Architect Registration Exam. Applicants taking the FE examination as a candidate for another jurisdiction and wishing to obtain their Engineer-In-Training Certificate from the Minnesota Board will also benefit from the amendments to the rules.

A line item in the Board's budget covers the cost of the rulemaking.

“(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”

The probable costs to the Board include the following:

- The cost of the rulemaking in general;
- Database modifications for online applications; and
- Website updates.

The Board anticipates a slight reduction in collection of application fees because it will not collect fees for individuals applying to retake a failed examination. The Board will collect the application fee at the time of application for an Engineer In-Training certificate or initial license as an Architect following successful completion of the examination.

Application fees for the Fundamentals of Engineering examination are \$25. There are approximately 65 retake applications per year, resulting in \$1,625 in lost revenue. Application fees for the Architect Registration Examination are \$75. There are approximately 63 retake applications per year, resulting in \$4,725 in lost revenue. Additionally, every year there are approximately 52 people who apply for the FE examination but never take the exam and approximately 8 people who apply for the ARE but never take the exam. The Board will not receive applications for these individuals, which will result in around \$1,900 in lost revenue. Overall, the Board expects to contribute approximately \$8,000 less to the General Fund each year.

The Board does not anticipate an increase or decrease in the cost of enforcing the rules. It also does not anticipate any probably costs to any other agency because the Board is the only entity charged with implementing and enforcing the 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 purpose of the proposed rule modifications is to change the application procedures delineated in existing rules. Rule writing is the only method that exists to achieve this goal.

“(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”

Administrative rules are the only method available to the Board to define the procedures for applying for examination, licensure, or certification.

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

There are no probable costs for governmental units, business, or individuals to comply with the proposed rules. Modifications to the rules update existing requirements. The package does not contain changes to the fees for application, licensure, or certification. In cases where an applicant fails the examination, he or she will not have to pay additional application fees to the Board to retake the exam. The application fee will be a one-time fee at the time of application for licensure or certification, rather than each time the applicant sits for the exam.

Applicants already apply to the national councils to take the examination after applying to and receiving authorization from the Board so there are no increased costs to the national councils as a result of the rule changes.

“(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 consequences of not adopting the proposed rule modifications are that applicants continue to have to apply first to the Board for authorization to take the examination then to the national council to sit for the examination. Applicants failing the examination will continue to be required to reapply to the Board for authorization each time he or she takes the exam.

“(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”

No relationship exists between these rules and federal regulations.

“(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.”

Neither federal regulations nor other Minnesota state laws address the areas covered in the proposed rules. Therefore, this consideration is not applicable for these rules.

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.

To safeguard life, health and property, and promote the public welfare, the Board provides reasonable assurance that persons practicing architecture, engineering, land surveying, landscape architecture, geology, and soil science and persons using the title certified interior designer are competent, ethical practitioners qualified through education, examination and experience. Additionally, as an official licensing entity, the Board is charged with implementing those statutes and rules which specifically regulate the practice of and title use for these professions.

The proposed rule amendments embodied in this Statement of Need and Reasonableness emphasize superior achievement in meeting the Board’s regulatory objectives with maximum flexibility for the regulated party and the Board in meeting those goals. The Board recognizes that the current procedures for applying to take certain national professionals examinations are cumbersome. The proposed amendments allow for maximum flexibility to the regulated parties and to the Board by removing unnecessary obstacles on the path to licensure.

The current procedures for taking the Architect Registration Examination (ARE) or Fundamentals of Engineering (FE) examination are as follows:

1. Individual submits an application to the Board
2. Board reviews application and requests additional information, if needed
3. Board mails a letter to the applicant approving (or denying) admission to the examination and providing instructions on how to register for the examination
4. Applicant submits an application to the national council
5. National council approves the applicant to take the exam
6. Board is electronically notified by the national council that the applicant has been approved
7. Board approves the applicant to register for the exam
8. Applicant receives an email from the national council stating that the applicant can register for the exam
9. Applicant registers for and sits for the exam
10. National council releases exam scores (electronically) to applicant and Board
 - a. If applicant failed the exam:

- i. Board revokes authorization to take the exam
 - ii. Board sends a letter to the applicant stating that the applicant must submit a new application to the Board to retake the exam
 - iii. Steps 1-10 are repeated
 - b. If applicant passed the exam:
 - i. Board sends a letter to the applicant stating that the applicant passed the exam and identifies next steps to licensure or certification
- 11. Applicant completes requirements for licensure or certification
- 12. Board issues license or certificate

The current process is very time-consuming for the applicant and for the Board staff. It also causes confusion for the applicants by having to simultaneously navigate two application procedures to take one examination (the Board's and the national council's). Many other states already allow their candidates to apply directly to the national council for the examination. Every week, there are individuals who call the Board office because they submitted an application to the national council and are waiting for Board authorization to take the exam. However, since the individual never submitted an application to the Board, the Board cannot authorize the exam. The Board staff must explain that Minnesota requires an application to be approved by the Board before they can be authorized to take the exam and select an exam date. These extra hoops that Minnesota candidates must jump through in order to be allowed to take the examination (compared to other states) creates unnecessary barriers to the licensure process.

After the rules are amended, the procedures for taking the ARE or FE examination will be simplified significantly:

1. Applicant submits an application to the national council
2. National council approves the applicant to take the exam
3. Applicant registers for and sits for the exam
4. National council releases exam scores to the applicant
 - a. If applicant failed the exam, applicant follows national council procedures to retake the exam
 - b. If applicant passed the exam, applicant completes requirements for licensure or certification
5. Applicant submits application for licensure or certification to the Board
6. Board reviews application and requests additional information, if needed
7. Board issues license or certificate

ADDITIONAL NOTICE

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a letter by Administrative Law Judge Kimberly Middendorf, dated November 2, 2018.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the Minnesota Chapter of the American Institute of Architects ("AIA"), the professional society representing architects regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the Minnesota Society of Professional Engineers ("MSPE") and the American Council of Engineering

Companies of Minnesota (“ACEC/MN”), the two largest professional societies representing professional engineers regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the National Council of Architectural Registration Boards (“NCARB”), the national council representing architects regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the National Council of Examiners for Engineering and Surveying (“NCEES”), the national council representing professional engineering and land surveyors regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to Minnesota academic institutions that offer architecture degree programs accredited by or seeking accreditation from the National Architectural Accrediting Board (“NAAB”):

Dunwoody College: Construction Science and Building Technology Department
University of Minnesota: College of Design

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to Minnesota academic institutions that offer engineering degree programs accredited by or seeking accreditation from the Engineering Accreditation Commission (“EAC”) of ABET, Inc.:

MN State University – Mankato: Department of Mechanical and Civil Engineering
MN State University – Mankato: Department of Electrical and Computer Engineering
MN State University – Mankato: Integrated Engineering Department
St. Cloud State University: Department of Electrical and Computer Engineering
St. Cloud State University: Department of Mechanical and Manufacturing Engineering
Univ. of MN – Duluth: Department of Electrical Engineering
Univ. of MN – Duluth: Department of Chemical Engineering
Univ. of MN – Duluth: Department of Civil Engineering
Univ. of MN – Duluth: Department of Mechanical and Industrial Engineering
Univ. of MN – Twin Cities: Aerospace Engineering and Mechanics Department
Univ. of MN – Twin Cities: Biomedical Engineering Department
Univ. of MN – Twin Cities: Department of Bioproducts and Biosystems Engineering
Univ. of MN – Twin Cities: Department of Chemical Engineering and Materials Science
Univ. of MN – Twin Cities: Department of Civil, Environmental and Geo- Engineering
Univ. of MN – Twin Cities: Department of Electrical and Computer Engineering
Univ. of MN – Twin Cities: Department of Mechanical Engineering
University of St. Thomas: School of Engineering
Winona State University: Composite Materials Engineering Department

The Board will post the Dual Notice of Intent to Adopt and the proposed rule change on the Board’s website.

A postcard notification of the proposed rule changes with the website address where recipients will find the Dual Notice of Intent to Adopt, the official language of the proposed rule, and the SONAR will be

mailed to all individuals with a current application on file with the Board for the Fundamentals of Engineering examination or the Architect Registration Examination. Note: applications expire after three years of inactivity.

A postcard notification of the proposed rule changes with the website address where recipients will find the Dual Notice of Intent to Adopt, the official language of the proposed rule, and the SONAR will be mailed to all current architect and professional engineer licensees.

Our Notice Plan includes giving notice required by statute. We will mail the proposed rules and the Notice of Intent to Adopt to everyone who has registered to be on the Board'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.

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 will consult with Minnesota Management and Budget (MMB). We will do this by sending MMB copies of the documents that we send to the Governor's Office for review and approval. We will do this before the Board's publishing the Notice of Intent to Adopt. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Board will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the Board has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Board has determined that they do not because the rules pertain to individuals applying for specific examinations required for licensure or certification by this Board, not to entities. Compliance with the rules falls on these individuals and enforcement of the rules falls solely on the Board.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by Minnesota Statutes, section 14.127, the Board has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Board has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city.

The Board has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis sections on pages 6 to 9 of this SONAR.

LIST OF WITNESSES

If these rules go to a public hearing, the Board anticipates that any of the current Board members at the time of the hearing would be available for testimony in support of the need for and reasonableness of the rules.

RULE-BY-RULE ANALYSIS

1800.0400 APPLICATION FOR EXAMINATION, LICENSURE, AND CERTIFICATION.

Subparts 1 and 2: Currently, individuals submit an application to the Board for approval to take the Architect Registration Examination. These subparts will be modified so that the applicant does not submit an application to the Board until *after* the applicant has passed the ARE and is ready to obtain a license in Minnesota. This is a procedure that has been followed by applicants for licensure as a landscape architect or certification as a certified interior designer for many years.

Subpart 3: Currently, individuals submit an application to the Board for approval to take the examination for engineer-in-training. This subpart will be modified so that applicants submit an application to the Board at the time they are requesting certification (i.e. after the examination has been passed).

1800.0500 FEES.

Subpart 1: This subpart will be modified to remove references to applications for examination as an architect or engineer-in-training. It will also be updated to clarify that the application for certification as engineer-in-training must include the application fee (currently the application fee is submitted with the application to take the exam; once the exam is passed, the individual does not submit another application and fee to get certified).

1800.1000 EDUCATION AND EXPERIENCE.

Subpart 1: The changes to this subpart clarify that an applicant for licensure as an architect must pass the examination and satisfy the education and experience requirements. They also clarify that an individual for licensure as an architect by comity must satisfy the Minnesota licensing requirements that were in effect at the time of the applicant's original licensure in the other state rather than the date of the applicant's original "approved application." The date of original licensure is verifiable whereas the date of the original approved application is not easily verified.

Subpart 1a: This subpart will be updated to direct applicants for the Architect Registration Examination to the National Council of Architectural Registration Boards. This language is similar to the language used for applicants for the Landscape Architect Registration Examination (1800.1500, subpart 2) and the National Council for Interior Design Qualification examination (1800.2200, subpart 2).

1800.1100 PROCEDURES.

Subpart 2: This subpart will be updated to reflect the procedures for submitting an application for *licensure* as an architect rather than submitting an application for admission to the examination.

Subpart 4: This subpart will be updated to state that application materials can be found on the Board's web site rather than by calling or writing the Board office.

1800.1200 EXAMINATION.

Subpart 1: This subpart will be updated to eliminate any references to the Board's involvement in examination procedures for the Architect Registration Examination. Applicants will apply directly to the National Council of Architectural Registration Boards for admission to the examination. It will no longer be necessary for the Board to determine which applicants meet the requirements for admission to the examination, forward notification of eligibility to the examination delivery vendor, report to the examinee the results of each examination, or dictate the procedures for retaking a failed examination section.

1800.2500 EDUCATION AND EXPERIENCE.

Subpart 1: The written examination requirements are delineated in part 1800.2700. The correction to the reference is housekeeping in nature.

Subpart 2: Even though applicants will submit their application directly to the national council, the education requirements for admission to the Fundamentals of Engineering examination will remain in rule. Applicants whose application is denied may appeal to the Board for admission to the exam.

Any applicant who meets the education requirements for licensure as a Professional Engineer should be allowed to sit for the Fundamentals of Engineering exam so it is not necessary to list the education requirements in two places. However, applicants for the FE examination do not have to have completed their degree to sit for the exam. (The degree must be completed prior to certification as an Engineer-In-Training). T

The language in this subpart will be modified so that applicants meeting the education requirements for admission to the PE exam, as delineated in subpart 2a, item A, qualify for admission to the FE exam (without repeating the language that is already in rule). Additionally, the allowances for taking the examination pre-graduation, as delineated in the current subpart 2, items A and D, will be rewritten for clarity.

Subpart 2a: This subpart is currently titled, "Admission to written Principles and Practice of Engineering (PE) examination" and delineates the education and experience requirements for admission to the PE exam. The list of accepted education is broader than the current list for certification as an engineer-in-training, which is currently delineated in subpart 2, because the list in subpart 2a, item A has been modified over the years to align the different educational paths with the experience requirements in subpart 2a, item B.

This subpart will be updated with a more generic title of "Education and experience requirements" and will refer to the requirements for certification as an engineer-in-training as well as requirements for admission to the written PE exam and licensure as a professional engineer. Certification as an engineer-in-training will require completion of the education requirement (which is broader than the current requirement) while admission to the PE exam and licensure as a professional engineer will continue to require completion of both the education and experience requirements.

1800.2700 WRITTEN EXAMINATION.

Subpart 1a: This subpart will be updated to remove the reference to when an individual may take the Fundamentals of Engineering examination since this determination will be left to the national council. Additional, the Board will no longer be responsible for notifying the applicant of the exam results or determining the requirements for retaking a failed examination.

Subpart 5: The Board will no longer be required to advise the applicant of equipment allowed during the FE examination. The national council will be responsible for this when approving applicants for the examination.

1800.2900 PROCEDURES.

Subpart 1: This subpart will be updated to direct applicants for the Fundamentals of Engineering examination to the National Council of Examiners for Engineering and Surveying. This language is similar to the language used for applicants for the Landscape Architect Registration Examination (1800.1500, subpart 2) and the National Council for Interior Design Qualification examination (1800.2200, subpart 2).

Subpart 1a: This subpart is new language describing the procedure to apply for certification as an engineer-in-training. Rather than submit this information to the Board before taking the Fundamentals of Engineering exam as currently required by subpart 1, the applicant will submit the information after passing the exam and completing the education requirement (graduating). Note: individuals may take the FE examination before graduating, but they are not certified as an engineer-in-training until after they graduate. This requirement is not changing.

Subparts 5 and 6: These subparts will be updated to refer only to applications for the PE examination rather than both the FE and PE examinations.

CONCLUSION

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

November 5, 2018
Date

Doreen Johnson
Doreen Johnson
Executive Director