



**TO:** The Honorable the Members of the Board of Regents

**FROM:** Sarah S. Benson *Sarah S. Benson*

**SUBJECT:** Proposed Amendments to Section 29.3 of the Rules of the Board of Regents and Section 68.14 of the Regulations of the Commissioner of Education and Repeal of Section 68.15 of the Regulations of the Commissioner of Education Relating to the General Unprofessional Conduct Provisions for the Design Professions and the Continuing Education Requirements for the Professions of Engineering, Land Surveying, and Geology

**DATE:** December 2, 2021

**AUTHORIZATION(S):**

*Don McGreevey* *Betsy Maloney*

### **SUMMARY**

#### **Issue for Decision (Consent)**

Should the Board of Regents amend section 29.3 of the Rules of the Board of Regents and section 68.14 of the Regulations of the Commissioner of Education and repeal section 68.15 of the Regulations of the Commissioner of Education relating to the general unprofessional conduct provisions for the design professions and the continuing education requirements for the professions of engineering, land surveying, and geology?

#### **Reason for Consideration**

Required by State statute (Chapter 260 of the Laws of 2020 and Chapter 475 of the Laws of 2014).

#### **Proposed Handling**

The proposed amendments are being presented to the Full Board for adoption as a permanent rule at the December 2021 meeting of the Board of Regents. A copy of the proposed amendments is included (Attachment A).

## **Procedural History**

The proposed amendments were presented to the Professional Practice Committee for discussion at the September 2021 meeting of the Board of Regents. A Notice of Proposed Rule Making was published in the State Register on September 29, 2021 for a 60-day public comment period. Following publication in the State Register, the Department received one supportive comment on the proposed amendments. An Assessment of Public Comment is included (Attachment B). No changes to the amendments are recommended at this time. Supporting materials for the proposed rule are available upon request from the Secretary to the Board of Regents.

## **Background Information**

Chapter 260 of the Laws of 2020 (Chapter 260) amends the Education Law to update the continuing education requirements for professional engineers and land surveyors; repeals section 7212 of the Education Law relating to mandatory continuing education requirements for land surveyors; and establishes continuing education requirements for professional geologists, effective January 1, 2022. This Chapter consolidates the continuing education requirements for all three professions into one section of law (Education Law §7211), which eliminated redundancy and promotes efficiency in administering these requirements.

Chapter 260 modernizes outdated laws that regulate continuing education for professional engineers and land surveyors and mandates continuing education for professional geologists. Section 7211 of the Education Law, which regulates continuing education for professional engineers, was enacted in 2002. Since that time, the rapid expansion of both the availability and use of online educational opportunities has revolutionized the manner in which continuing education programs are offered across the professions. Chapter 260 permits the Department, and these three professions which it regulates, to take full advantage of these opportunities by eliminating the current restrictions on the formats of continuing education activities. This Chapter further defines the courses and activities that are acceptable for satisfying the continuing education requirements in all three professions and allows for up to six hours of continuing education to carry over to licensees' subsequent triennial registration periods. Additionally, Chapter 260 mandates continuing education for professional geologists, including requiring professional geologists who first became licensed in 2016, to complete 36 hours of continuing education every triennial registration period.

## **Proposed Amendments**

The proposed amendments implement Chapter 260 by:

- amending section 68.14 of the Commissioner's Regulations to conform such section to all of Chapter 260's above-referenced continuing education requirements for professional engineers, land surveyors and professional geologists; and

- repealing section 68.15 of the Commissioner’s Regulations. This section implements the land surveyor continuing education requirements provisions of section 7212 of the Education Law which Chapter 260 repeals.

Additionally, the proposed rule amends subparagraph (i) of paragraph (3) of subdivision (b) of section 29.3 of Regents Rules to add professional geologists to the provisions relating to conduct that is not considered unprofessional conduct in the design professions. When geology became a licensed profession in 2016, the Department inadvertently neglected to add geology to the list of professions in the Regents Rules. This proposed amendment corrects this omission.

### **Related Regents Items**

September 2021: [Proposed Amendments to Section 29.3 of the Rules of the Board of Regents and Section 68.14 of the Regulations of the Commissioner of Education and Repeal of Section 68.15 of the Regulations of the Commissioner of Education Relating to the General Unprofessional Conduct Provisions for the Design Professions and the Continuing Education Requirements for the Professions of Engineering, Land Surveying and Geology](https://www.regents.nysed.gov/common/regents/files/921ppcd2.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/921ppcd2.pdf>)

### **Recommendation**

It is recommended that the Board of Regents take the following action:

VOTED: That section 29.3 of the Rules of the Board of Regents and section 68.14 of the Regulations of the Commissioner of Education be amended, and section 68.15 of the Regulations of the Commissioner of Education be repealed, as submitted, effective January 1, 2022.

### **Timetable for Implementation**

If adopted at the December 2021 meeting of the Board of Regents, the proposed amendments will become effective January 1, 2022.

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS AND THE  
REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6509, 7211 and 7212 of the Education Law and Chapter 260 of the Laws of 2020 and Chapter 475 of the Laws of 2014

1. Subparagraph (i) of paragraph (3) of subdivision (b) of section 29.3 of the Rules of the Board of Regents is amended, to read as follows:

(i) Delegator means the primary design team or team of design professionals which may be composed of professional engineers, land surveyors, professional geologists, architects and landscape architects working either alone or in combination, licensed and registered in accordance with articles 145, 147 or 148 of the Education Law, and authorized to provide the services being delegated.

2. The title of section 68.14 of the Regulations of the Commissioner of Education is amended, to read as follows:

Continuing education for professional engineers, land surveyors and professional geologists.

3. Section 68.14 of the Regulations of the Commissioner of Education is amended, to read as follows:

(a) Definitions. As used in this section[, acceptable]:

(1) Acceptable accrediting agency means an organization accepted by the department as a reliable authority for the purpose of accreditation at the post-secondary level, applying its criteria for granting accreditation in a fair, consistent and nondiscriminatory manner, such as an agency recognized for this purpose by the Council for Higher Education Accreditation.

(2) Licensed professional means any individual licensed under Article 68 of the Education Law as a professional engineer, land surveyor or professional geologist.

(b) Applicability of requirement.

(1) Each licensed professional [engineer], required under article 145 of the Education Law to register with the department to practice in New York State, shall comply with the mandatory continuing education requirements as prescribed in subdivision (c) of this section, except those licensees exempt from the requirement or who obtain an adjustment to the requirement pursuant to paragraph (2) of this subdivision or who are subject to a different requirement pursuant to this section.

(2) Exemptions and adjustments to the requirement.

(i) Exemptions. The following licensees shall be exempt from the continuing education requirements, as prescribed in subdivision (c) of this section:

(a) licensees for the triennial registration period during which they are first licensed to practice engineering, land surveying, and/or geology in New York State, except those first licensed to practice engineering, land surveying, and/or geology in New York State pursuant to an endorsement of a license of another jurisdiction;

(b) [licensees] licensed professional engineers and/or land surveyors whose first registration date following January 1, 2004 occurs prior to January 1, 2005, for periods prior to such registration date; [and]

(c) licensed professional geologists whose first registration date following January 1, 2022 occurs prior to January 1, 2023, for periods prior to such registration date; and

(d) licensees who are not engaged in the practice of engineering, land surveying or geology as evidenced by not being registered to practice in New York State, except

as otherwise provided in subdivision (e) of this section to meet the requirements for the resumption of practice in New York State.

(ii) . . .

(c) Mandatory continuing education requirement.

(1) General requirement.

(i) During each triennial registration period, meaning a registration period of three years' duration, an applicant for registration as a professional engineer or professional geologist shall complete at least 36 hours of continuing education acceptable to the department, and an applicant for registration as a land surveyor shall complete at least 24 hours of continuing education acceptable to the department, as defined in paragraph (3) of this subdivision[, provided that at least 18 hours of such continuing education shall be in courses of learning, no more than 18 hours of such continuing education shall be in other educational activities as prescribed in paragraph (3) of this subdivision, and at]\_. At least one hour of such continuing education shall be in professional ethics and no more than six continuing education hours completed during one triennial registration period may be transferred to a subsequent triennial registration period. Any licensed professional [engineer] geologist whose first registration date following January 1, [2004] 2022 occurs less than three years from that date, but on or after January 1, [2005] 2023, shall complete continuing education hours on a prorated basis at the rate of one hour of acceptable continuing education per month for the period beginning January 1, [2004] 2022 up to the first registration date thereafter. Such continuing education shall be completed during the period beginning January 1, [2004] 2023 and ending before the first day of the new registration period or at the option of the licensee during any time in the previous registration period.

(ii) ....

(2) Requirement for certain [licensees] licensed professional engineers.

(i) In accordance with section 7211(1)(d) of the Education Law, a licensee shall be deemed to have satisfied the continuing education requirement prescribed in paragraph (1) of this subdivision, if the licensee meets the following conditions:

(a) ...

(b) Either:

(1) ...

(2) ....

(ii) A licensee who does not meet the conditions prescribed in clauses (i)(a) and (b) of this paragraph shall be required to complete acceptable continuing education, as defined in paragraph [(3)] (4) of this subdivision, at the rate of one hour of continuing education per month from the date the condition is not met until the next registration date. Thereafter, the licensee shall complete the regular continuing education requirement prescribed in paragraph (1) of this subdivision.

(3) Requirement for certain licensed professional geologists.

(i) In accordance with section 7211(1)(e) of the Education Law, a licensee shall be deemed to have satisfied the continuing education requirement prescribed in paragraph (1) of this subdivision, if the licensee meets the following conditions:

(a) Prior to January 1, 2022, the licensee was directly employed on a full-time basis by the State of New York; or agencies, public authorities, or public benefit corporations of the State of New York; or local government units of the State of New York in a position requiring licensure in geology and is represented by a collective

bargaining unit or designated management or confidential pursuant to article 14 of the Civil Service Law at all times when so employed; and

(b) Either:

(1) the licensee has continuously been employed in a position or successor positions described in clause (a) of this subparagraph, and since January 1, 2022, has not otherwise practiced geology in New York State in any other capacity outside of such employment; or

(2) the licensee has left employment described in clause (a) of this subparagraph, and since January 1, 2023, has not practiced geology in New York State in any other capacity outside of employment in a position described in clause (a) of this subparagraph.

(ii) A licensee who does not meet the conditions prescribed in clauses (i)(a) and (b) of this paragraph shall be required to complete acceptable continuing education, as defined in paragraph (4) of this subdivision, at the rate of one hour of continuing education per month from the date the condition is not met until the next registration date. Thereafter, the licensee shall complete the regular continuing education requirement prescribed in paragraph (1) of this subdivision.

(4) Acceptable continuing education. To be acceptable to the department, continuing education shall meet the requirements of this paragraph. Such continuing education must be in the subjects prescribed in subparagraph (i) of this paragraph and be the types of learning activities prescribed in subparagraph (ii) of this paragraph.

(i) Subjects. Acceptable continuing education shall mean courses of learning and educational activities in architecture, engineering, interior design, land surveying, landscape architecture and geology that may contribute to professional practice in



engineering [and shall have as its focus one or more of the following subjects:(a) aerospace engineering, agricultural engineering, architectural engineering, bioengineering, ceramic engineering, chemical engineering, civil engineering, construction engineering, control systems engineering, electrical/computer engineering, environmental engineering, fire protection engineering, geological engineering, industrial engineering, manufacturing engineering, mechanical engineering, materials/metallurgical engineering, mining/mineral engineering, naval architecture/marine engineering, nuclear/ radiological engineering, ocean engineering, petroleum engineering, structural engineering, systems engineering, architecture, land surveying; or other matters of law and/or ethics which contribute to the professional practice of engineering and the health, safety, and/or welfare of the public; and

(b) in other topics which contribute to the professional practice of engineering as such practice is defined in section 7201 of the Education Law.], land surveying and/or geology as such practice is defined in sections 7201, 7203 and 7204-a of the Education Law.

(ii) Types of learning activities. Acceptable continuing education shall be the types of learning activities prescribed in this subparagraph and be subject to the limitations prescribed in this subparagraph.

(a) ....

(b) Other educational activities. Acceptable continuing education shall be the following other educational activities[, provided that no more than 18 hours of continuing education in a registration period shall consist of such other educational activities]:

(1) preparing and teaching a course offered by a sponsor of continuing education to professional engineers, land surveyors and/or professional geologists approved

pursuant to subdivision (i) of this section, provided that such teaching shall not be acceptable where the licensee has taught the course on more than one occasion without presenting new or revised material. Continuing education hours that may be credited for this activity may include actual instructional time plus preparation time which may be up to two additional hours for each hour of presentation;

(2) authoring [an article published in] a peer-reviewed [journal or a] article, map, or other document published [book] by a governmental, academic or research entity in a journal, book or digital format. A licensee shall receive nine continuing education hours for each written work published during the registration period;

(3) making a technical presentation at a professional conference sponsored by an organization that is a sponsor of continuing education to professional engineers, land surveyors and/or professional geologists, approved pursuant to subdivision (i) of this section. Continuing education hours that may be credited for this activity shall include actual instructional time, plus preparation time which may be up to two additional hours for each hour taught;

(4) obtaining a patent related to the practice of engineering, land surveying and/or geology. A licensee shall receive nine continuing education hours for each patent granted on an invention during the registration period.

(5) completing [a self-study program] educational activities, meaning structured study, including, but not limited to, self-study programs, provided by a sponsor approved pursuant to subdivision (i) of this section, that is based on audio, audio-visual, written, on-line, and other media, and does not include live instruction, transmitted in person or otherwise, during which the student may communicate and interact with the instructor and other students;

(6) ...

(7) serving on any committee or task force that addresses technical and/or regulatory issues relating to the professional practice of engineering, land surveying and/or geology, provided that such committee or task force has been established by a governmental entity[, professional association,] or other entity determined by the department, with assistance from the State Board for Engineering, Land Surveying and Geology, to be acceptable. Continuing education hours that may be credited for this activity shall be one hour of credit for every two hours of service while engaged in activities directly related to professional practice. To be acceptable for continuing education credit, such service must be certified in writing by an authorized individual within the committee or task force and approved by the department. No more than nine hours of such continuing education may be included during each registration period.

(d) Renewal of registration. At each re-registration, licensed [professional engineers] professionals shall certify to the department that they have either complied with the continuing education requirements, as prescribed in this section, or are subject to an exemption or adjustment to such continuing education requirements, as prescribed in subdivision (b) of this section.

(e) Requirement for lapse in practice.

(1) [A licensee returning to the practice of engineering after a lapse in practice, as evidenced by not being registered to practice in New York State, whose first registration date after such lapse in practice and following January 1, 2004 occurs less than three years from January 1, 2004, but on or after January 1, 2005, shall be required to complete:

(i) at least one hour of acceptable continuing education for each month beginning with January 1, 2004 until the beginning of the new registration period, which shall be completed for a licensee who has not lawfully practiced engineering continuously in another jurisdiction throughout such lapse period, in the 12-month period before the beginning of the new registration period; and for the licensee who has lawfully practiced engineering continuously in another jurisdiction throughout such lapse period, in the new registration period or at the option of the licensee in the period beginning 36 months before the commencement of the new registration period and ending at the conclusion of such registration period; and

(ii) for a licensee who has not lawfully practiced engineering continuously in another jurisdiction throughout such lapse period, at least 12 hours of acceptable continuing education in each successive 12-month period of the new registration period; and for a licensee who has lawfully practiced engineering continuously in another jurisdiction throughout such lapse period, the regular continuing education requirement during the new registration period.

(2) Except as prescribed in subparagraph (i) of this paragraph for registrations therein specified, the A licensee who returns to [the] practice [of engineering] after a lapse in practice in which the licensee was not registered to practice in New York State [and did not lawfully practice engineering continuously in another jurisdiction throughout the lapse period,] shall be required to complete:

(i) ...

(ii) [at least] one hour of acceptable continuing education for each month of lapsed registration up to a maximum [36] of 12 hours [for professional engineers and professional geologists and up to a maximum of 24 hours for land surveyors], which

shall be completed in the 12 months before the beginning of the new registration period[; and

(iii) at least 12 hours of acceptable continuing education in each succeeding 12-month period, after such registration is reissued, until the next registration date.

(3) Except as prescribed in subparagraph (i) of this paragraph for registrations therein specified, the licensee who returns to the practice of engineering after a lapse in practice in which the licensee was not registered to practice in New York State but did lawfully practice engineering continuously in another jurisdiction throughout the lapse period, shall be required to complete:

(i) the continuing education requirement applicable to the period of time the licensee was registered in the licensee's last registration period; and

(ii) at least one hour of acceptable continuing education for each month of lapsed registration up to a maximum of 36 hours, which shall be completed in the new registration period, or at the option of the licensee in the period beginning 36 months before the commencement of the new registration period and ending at the conclusion of the new registration period; and

(iii) the regular continuing education requirement during the new registration period].

(f) Conditional registration.

(1) The department may issue a conditional registration to a licensee who attests to or admits to noncompliance with the continuing education requirements of this section, provided that such licensee meets the following requirements:

(i) ...

(ii) ...

(iii) the licensee agrees to complete additional continuing education during such conditional registration period, which the department may require to ensure the licensee's proper delivery of professional [engineering] services consistent with the licensee's practice [of engineering].

(2) ....

(g) ....

(h) ....

(i) Sponsor approval.

(1) To be approved by the department, sponsors of continuing education to licensed [professional engineers] professionals in the form of courses of learning or [self-study programs] educational activities shall meet the requirements of either paragraph (2), (3) or [(3)] (4) of this subdivision.

(2) The department shall deem approved as a sponsor of continuing education to licensed [professional engineers] professionals in the form of courses of learning or [self-study programs] educational activities:

(i) a sponsor of continuing education that is approved by the International Association for Continuing Education and Training (IACET), or the Practicing Institute of Engineering, or the American Institute of Architects Continuing Education System (AIA/CES), or The Shaw Fund, or The New York State Council of Professional Geologists or an equivalent organization determined by the department with assistance from the State Board for Engineering, Land Surveying and Geology to have adequate standards for approving sponsors of continuing education for professionals regulated by Title VIII of the Education Law that include but are not limited to standards that are

equivalent to the standards prescribed in clauses (3)(ii)(a), (c) and (d) of this subdivision; [or]

(ii) a postsecondary institution that has authority to offer programs that are registered pursuant to Part 52 of this Title or authority to offer equivalent programs that are accredited by an acceptable accrediting agency[.]; or

(iii) a sponsor of continuing education that is approved by a licensing authority or agency of another jurisdiction under standards substantially equivalent to those of the Department.

(3) Department review of sponsors.

(i) The department shall conduct a review of sponsors that apply for approval to offer continuing education to licensed [professional engineers] professionals in the form of courses of learning or [self-study programs] educational activities that are not deemed approved pursuant to the requirements of paragraph (2) or (3) of this subdivision.

(ii) Organizations desiring to offer courses of learning or [self-study programs] educational activities based upon a department review under this paragraph shall submit, with the fee as set forth in subdivision (j) of this section, an application for advance approval as a sponsor at least 90 days prior to the date of the commencement of such continuing education that documents that the organization:

(a) will offer courses of learning or [self-study programs] educational activities in one or more of the subjects prescribed for acceptable continuing education in subparagraph (c)[(3)][4](i) of this section;

(b) is an organized educational entity or an entity that has expertise in the professional areas that will be taught, including but not limited to, postsecondary

institutions that are not already deemed approved pursuant to subparagraph (2)(ii) of this subdivision, and national, state, or local [engineering] professional design associations;

(c) provides course instructors who are qualified to teach the courses which will be offered, including but not limited to, faculty of a college of engineering, land surveying or geology accredited by an acceptable accrediting agency; or instructors who are specially qualified authorities in engineering, land surveying or geology as determined by the department with assistance from the State Board for Engineering, Land Surveying and Geology, to conduct such courses;

(d) ...

(e) will maintain records for at least six years from the date of completion of coursework, which shall include, but shall not be limited to, the name and curriculum vitae of the faculty, a record of attendance of licensed [professional engineers] professionals in the course if a course, a record of participation of licensed [professional engineers] professionals in the [self-study program] educational activities if [a self-study program] an educational activity, an outline of the course or program, date and location of the course or program, and the number of hours for completion of the course or program. In the event an approved sponsor discontinues operation, the governing body of such sponsor shall notify the department and shall transfer all records as directed by the department.

(iii) ....

(iv) ....

(v) ....

(j) Fees.



(1) At the beginning of each registration period, a mandatory continuing education fee of \$45 shall be collected from licensees engaged in the practice of engineering, land surveying or geology in New York State, except for those exempt from the requirement pursuant clauses (b)(2)(i)(a) and (c) of this section. This fee shall be in addition to the registration fee required by section 7206 of the Education Law.

(2) ....

(3) Organizations desiring to offer continuing education to licensed professional engineers, land surveyors or professional geologists based upon a department review, pursuant to paragraph (i)(3) of this section, shall submit an application fee of \$900 with the application requesting the issuance of a permit from the department to become an approved sponsor of continuing education to licensed professional engineers, land surveyors or professional geologists in the form of courses of learning or [self-study programs] educational activities. Application for a three-year renewal of the permit shall be accompanied by a fee of \$900.

4. Section 68.15 of the Regulations of the Commissioner of Education is repealed.

ASSESSMENT OF PUBLIC COMMENT

Since publication of the Notice of the Emergency Adoption and Proposed Rule Making in the State Register on September 29, 2021, the State Education Department received the following comment on the proposed amendment.

1. COMMENT: A comment was submitted by the President of the New York State Association of Professional Land Surveyors (“NYSAPLS”) on behalf of the organization. The commenter states that NYSAPLS supported the legislation that was signed into law as Chapter 260 of the Laws of 2020 (Chapter 260), which streamlines continuing education (CE) requirements, allows flexibility in educational activity formats, and permits carryover of some CE credits for the design professions. The commenter further states that Chapter 260 ensures that New York State’s design profession CE requirements are modernized to reflect the increased use of online educational opportunities and updated to allow for increased learning opportunities. Additionally, the commenter states that NYSAPLS supports the proposed rule and looks forward to continuing to support the Department as these regulations are implemented.

DEPARTMENT RESPONSE: The Department appreciates the supportive comments as it works to protect the public by implementing Chapter 260. Chapter 260 modernizes outdated laws that regulate CE for professional engineers and land surveyors and mandates CE for professional geologists to help ensure New York State licensed design professionals maintain their competency throughout their careers.