



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

April 25, 2023

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 Governing Initial Licensure and Renewal of Individuals and Firms; Retired Status; Continuing Education Requirements; Peer Review Oversight Committee; Retention of Audit and Other Professional Services Documentation; and Housekeeping Updates; OAH Docket Number 82-9035-38972; Revisor's ID Number R-04725.

Dear Librarian:

The Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design intends to adopt rule amendments that

- clarify the education evaluation process for applicants with foreign degrees
- allow direct registration for the Fundamentals of Soil Science exam;
- modify the education and experience requirements for landscape architects to provide more paths to licensure;
- update and clarify the general description of information required for applications to the Board;
- clarify the certification statement to which applicants must agree when applying for licensure/certification or renewing or reinstating a license/certificate;
- clarify the validity of applications and application expiration;
- update definitions; and
- make other housekeeping updates, including remove obsolete, unnecessary, or duplicative rules.

We plan to publish a Notice of Intent to Adopt Rules in the May 8, 2023, 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 at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have any questions about these rules, please contact me at 651-757-1523.

Yours very truly,

A handwritten signature in blue ink that reads "Kay Weiss". The signature is cursive and fluid.

Kay Weiss
Assistant Executive Director

Enclosures: Notice of Intent to Adopt Rules
 Statement of Need and Reasonableness
 Proposed Rules



BOARD OF ARCHITECTURE ▪ ENGINEERING
LAND SURVEYING ▪ LANDSCAPE ARCHITECTURE
GEOSCIENCE ▪ INTERIOR DESIGN

STATEMENT OF NEED AND REASONABLENESS

**Proposed Amendment to Rules Governing
Definitions; Information Required for Applications;
Foreign Degree Evaluation; Architect Initial Licensure Application;
Landscape Architect Education and Experience Requirements;
Fundamentals of Soil Scientist Examination Registration;
Application Validity and Expiration; and Housekeeping Updates.
*Minnesota Rules, Chapter 1800***

Revisor's ID Number R-04764

MARCH 2023

ACRONYMS

- ARE – Architect Registration Examination
- BLA – Bachelor of Landscape Architecture
- CACB – Canadian Architectural Certification Board
- CID – Certified Interior Designer
- CIDQ – Council for Interior Design Qualifications
- CLARB – Council of Landscape Architectural Registration Boards
- CSSE – Council for Soil Science Examiners
- FE – Fundamentals of Engineering (Examination)
- FG – Fundamentals of Geology (Examination)
- FSS – Fundamentals of Soil Science (Examination)
- MLA – Master of Landscape Architecture
- MNLS – Minnesota Land Surveyor (Examination)
- NAAB – National Architectural Accrediting Board
- NCARB – National Council of Architecture Registration Boards
- NCEES – National Council of Examiners for Engineering and Surveying

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 Kay Weiss at the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design, 85 E. 7th Place, Suite 160, St. Paul, MN 55101, 651-757-1523 and email: kay.weiss@state.mn.us. TTY users may call the Board at (800) 627-3529.

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 to:

- clarify the education evaluation process for applicants with foreign degrees
- allow direct registration for the Fundamentals of Soil Science exam;
- modify the education and experience requirements for landscape architects to provide more paths to licensure;
- update and clarify the general description of information required for applications to the Board;
- clarify the certification statement to which applicants must agree when applying for licensure/certification or renewing or reinstating a license/certificate;
- clarify the validity of applications and application expiration;
- update definitions; and
- make housekeeping modifications

Additionally, the amendments remove obsolete, unnecessary, or duplicative rules identified in the Board’s 2022 Obsolete Rule Report.

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 the proposed amendments to the rules are all Board applicants for examination, in-training classification, licensure, certification as a CID and renewal; and the public for whom the professions regulated by the Board provide services. No class bears a specific cost for the proposed rules. In general, all classes will benefit from the proposed rules. The housekeeping amendments generally positively affect all classes.

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 cost of the rulemaking in general.

The Board does not anticipate an increase or decrease in the cost of enforcing the rules. It also does not anticipate probable 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 requirements 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 requirements for examination and licensure.

“(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, businesses, or individuals to comply with the proposed rules. Modifications to the rules update existing requirements. The package contains modest reductions in the costs: Comity licensure (licensure under Minnesota Statutes, section 326.10, subdivision 1, clause (2)) is reduced from \$100 to \$75, the same fee as that for initial licensure. Late filing fees are reduced from a maximum of \$60 to a maximum of \$30. Due to direct registration with the Council for Soil Scientist Examiners, Fundamentals of Soil Science examinees who do not return to the Board to receive an “in training” certificate (which is not required for licensure) will no longer pay a \$25 application fee to the Board.

“(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 include following:

- **Soil Science examinees** cannot take advantage of the year-round registration to sit for the fundamentals exam and will not have the flexibility of direct registration. The Council for Soil Scientist Examiners (CSSE) may not repeat the one-time variance the Board has received to proctor the exam themselves on a specific date (as per current rule).
- **Landscape Architect applicants** will not benefit from alternative paths to licensure and reduced experience requirements.

- **Applicants under Minnesota Statutes, section 326.10, subdivision 1, clause (2)** will see no reduction in application fees.
- **Foreign degree applicants** for some professions will not have a clear path for establishing education equivalency.
- **Individuals with prior disciplinary or felony convictions that they have already reported to the Board** must continue to report the same facts, which requires them to prepare a statement of explanation and renew by mail rather than the more convenient online renewal method.

Housekeeping: Housekeeping modifications are not substantive and do not have any increase in cost to comply with them.

“(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 directly address most 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 has removed various friction points

for applicants and examinees, particularly for the landscape architect and soil science professions and for foreign degree applicants.

Finally, the proposed amendments include structural changes that assist rule readability and comprehension and eliminate obsolete, unnecessary, or duplicative rule language.

ADDITIONAL NOTICE

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in an order issued by Administrative Law Judge Ann O'Reilly on March 28, 2023.

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-MN"), 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 Surveyors ("MSPS") 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 Minnesota Society of Professional Engineers ("MSPE") and the Minnesota Association of County Surveyors (MACS), the largest professional societies representing land surveyors regulated by this Board.

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

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the American Institute of Professional Geologists - Minnesota Chapter (AIPG), the largest professional society representing professional geologists regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the Minnesota Association of Professional Soil Scientists (MAPSS), the largest professional society representing professional soil scientists regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the Northland Chapter of the International Interior Design Association ("IIDA") and the Minnesota Chapter of the American Society of Interior Designers ("ASID"), the two professional societies representing certified interior designers 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 the Council of Landscape Architectural Registration Boards (“CLARB”), the national council representing landscape 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 Association of State Boards of Geology (“ASBOG”), the national council representing professional geologists 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 Soil Science Examiners (“CSSE”), the national council representing professional soil scientists regulated by this Board.

Copies of the Dual Notice of Intent to Adopt and the proposed rule change will be mailed to the Council for Interior Design Qualification (“CIDQ”), the national council representing certified interior designers 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 landscape architecture degree programs accredited by or seeking accreditation from the Landscape Architectural Accrediting Board (“LAAB”) or that offer a non-accredited Landscape Architecture degree or certificate: University of Minnesota—MLA and BLA Programs; Hennepin Technical College.

The Board will post the Dual Notice of Intent to Adopt, the SONAR, and the proposed rule changes 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 an unexpired application for examination, for licensure, or for certification as a CID on file with the Board.

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

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, and serve a copy of the SONAR on the Legislative Reference Library per Minnesota Statutes, section 14.131.

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 compliance with the rules falls on individuals seeking examination, in-training classification, and licensure or certification. 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 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. The Board does not intend to call non-agency witnesses.

RULE-BY-RULE ANALYSIS

The Board's proposed rules include best practices and recommendations from the Office of the Revisor including:

- changing the term "shall" to "must" in multiple places throughout the rule package;
- breaking rules structured as paragraphs into "outline" structure, with subpart, item, and subitem entries, as the rule text might require;
- using the abbreviated names of entities (MNLS, NCARB, NCEES, et cetera) when the abbreviation is defined in rule; and
- using active in place of passive voice.

The Board has also made the following changes throughout the chapter:

- The unnecessary word "written" as a descriptor in front of "examination" is removed. Oral exams are not offered, and many exams are now computer based. The single word "examination" suffices.
- Additional language clarifies when "certificate" or "certification" refers to
 - in-training classification, generally referred to nationally and within the chapter as an "in-training certificate,"as compared to
 - certification as a Certified Interior Design (CID)as compared to
 - certification in the sense of asserting agreement or compliance with a statement, such as an applicant certifying that they will comply with all Board statutes and rules.
- The phrase "under Minnesota Statutes, section 326.10, subdivision 1, clause (2)" is substituted for the phrase "by comity." The Board is anticipating future legislation that would change clause (2). If that legislative change occurs, the preciseness of the rule language "by comity" would necessitate another rule package, which would merely have a dilatory effect on implementing the statute change. It would only impede licensure; there is no public protection or benefit. The substitution has no impact on the meaning of the rule nor on its application now. The substitution can be considered a general improvement, even without the possible future benefit, as "comity" is neither a word nor concept in common understanding. Therefore, sending people to the statute rather than to a dictionary both now and in future is beneficial for all parties.

PART 1800.0050 DEFINITIONS.

- **Subp. 2 “Applicant”:** The revision does not change the nature of the existing definition, it merely corrects and simplifies it.
 - **Item A:** The existing list of exams is incorrect: As of 2019, the Board no longer processes applications for the Architect Registration Examination (ARE). The current proposed rules would require the striking of the Fundamentals of Soil Science (FSS) examination. Instead of naming all the examination application types, the revised language in item A describes the act of applying directly to the Board and lists the *types* of applications: examination, in-training classification, licensure, certification as a CID, renewal, and reinstatement.
 - **Item B:** The revisor recommends a structural change and rewrite of the last sentence in the current rule subpart. That recommendation turns that last sentence of the subpart into an item B.
- **Subp. 8 “Examinee”:** As noted above, and as it pertains throughout the rest of the chapter, “examinee” needs to be edited to reflect only those exams for which an individual must first apply to the Board before registering with the exam administrator to sit.
- **Subp. 11a “MNLS”:** For clarity, the Board is adding the abbreviation for this Minnesota-specific exam to its definitions.

PART 1800.0130 EXAMINATION IRREGULARITIES; CHEATING AND NONCOMPLIANT CONDUCT.

“Candidate” is both an undefined term in rule and a less accurate one in this context than the defined term “examinee.”

PART 1800.0140 SECURITY AND IRREGULARITIES.

Most examinations are now administered by third party administrators, not by the Board. The rule needs to be updated to reflect this reality.

PART 1800.0200 CLASSES OF LICENSEES.

- Class 1 is obsolete and has been struck.
- “Class” language has been removed as it is unnecessary and can tend to imply a different capability under a license (such as classes of drivers’ licenses), which is not accurate.
- The revised item A is rewritten as described in the introduction to the rule-by-rule analysis to remove the word “comity.”
- The revised item B merely cleans up the language.

PART 1800.0400 APPLICATION FOR EXAMINATION, IN-TRAINING CLASSIFICATION, LICENSURE, AND CERTIFICATION AS A CERTIFIED INTERIOR DESIGNER, AND REINSTATEMENT

The part includes changes that are housekeeping, revisor best practices, or that clarify the meaning of “certificate” as described above.

Subpart 1: The subpart contains one citation change, which is necessary because not all the fees referenced in the part are in section 326.105 of the Minnesota Statutes; some are in different subdivisions of section 326.10. However, part 1800.0500 correctly identifies all fee locations and so it is the best citation for this part.

Subpart 1a, item A: Minnesota Statutes, section 13.05 stipulates that the responsible authority only “collect and store ... private and confidential data ... limited to that necessary for the administration and management of programs.” The Board has no need to collect place of birth.

Subpart 1a, item E: The modification substitutes the *name* for the geology and soil science fundamental examination for the language “in-training.” The item is about fundamentals examinations. The item language as proposed would be consistent for all the professions that have a fundamentals exam. This clarity is important because the Board with this package proposes to allow direct registration for the FSS examination. As written, the item indicates the requirement is to hold a “soil scientist-in-training” classification in order to meet the licensure requirement. That is incorrect. An individual after passing the FSS exam may *choose* to request in-training classification, but applicants are not *required* to make this application and pay the associated fee to the Board. The Board wants this clear.

Subpart 1a, item H: When a rule package in 2019 allowed for direct registration of the architect professional examination, the Board missed adding the ARE exam to this list of required information. Just as the Board requires the information in items F and G, for the landscape architect and certified interior designer direct registration professional exams, so the Board needs this information for architects and their direct registration professional exam.

Subpart 1a, renumbered item I: The Board does not need a complete employment history to determine qualifications. The Board only needs the employment history relevant to the experience the applicant is using to meet the licensure or examination requirements. The rule change clarifies this.

Subpart 3, item B: The Board is proposing in this package that individuals be allowed to directly register for the FSS examination. Soil scientist-in-training classification therefore must be added to this item so that—if they so choose—individuals may apply to the Board for a soil science-in-training certificate. While the *Board* does not require that an individual hold a certificate in order to gain licensure, some other states do—and some employers reward employees who have gained in-training classification. The Board will therefore continue to offer this optional certificate, if the related requirements are met and the application and fee are submitted to the Board.

Subpart 4, item C, subitem (2): The statement of explanation referenced in subitem (2) is already required by the certification in the subitem that follows. See subpart 5, newly numbered item B, for that requirement. Subitem (2) is therefore redundant and should be struck.

Subpart 5:

- **Item A** clarifies that the certification is required for all applications to the Board.
- **Item A, subitems 2 and 3:** These changes clarify that the same disciplinary-related action does not need to be reported to the Board over and over again. Prior to licensure or certification, *all* actions must be reported (unit [a]), but at renewal, only new matters must be reported (unit [b]).
- **Item A, subitems 6:** The original language is awkward. The original language is also incorrect, as “certified interior designer” is a title not a practice act, and so no professional services are restricted to those who hold the title. “Certified interior designer” has consequently been removed from the rewrite. Otherwise, no change to the meaning of this item has been made.
- **Item A, subitem 7:** This subitem has the same issues as subitem 6 and has been similarly rewritten.
- **Item C:** This item is added due to the reality that some applicants for licensure or for certification as an interior designer do unaccountably receive Board approval and yet take many months (sometimes longer) to submit the required fee after which the Board issues the licensure/certificate number. The Board meanwhile has only an outdated certification statement regarding discipline, felony convictions, and compliance with Minnesota statutes and rules. The item seeks to remedy this “hole” in the certification requirement by requesting a new certification statement if it has been more than six months since the Board issued the approval.

PART 1800.0450 TEMPORARY MILITARY LICENSE OR CERTIFICATE.

The changes are all housekeeping related.

PART 1800.0500 FEES.

Subpart 1: The revisor has restructured the subpart into items.

- **Item C:** The item has been added to clarify that, if an applicant has been deemed ineligible for licensure or certification based upon the information the applicant submitted, the applicant cannot subsequently remedy the reason for ineligibility and then expect a re-evaluation without submitting a new application and fee. This is a not a change from Board practice. The Board cannot practically nor reasonably “re-review” a denied application. To do so confuses compliance with the requirements in Minnesota Statutes, chapter 14, and Minnesota Statutes, chapter 15.99. However, the Board deems an explicit statement such as item C useful for clarity.

- **Item E:** As noted above and will be detailed in the analysis of parts 1800.3910 through 1800.3930, the Board intends to allow direct registration to the FSS exam. Therefore, “soil scientist-in-training” must be removed here and appear instead in item G.
- **Item F:** The Board is clarifying all circumstances under which, for compliance with its records retention policy and Minnesota Statutes, section 13.05, an application must be considered expired and a new application opened. This clarification has become necessary now that many exams are no longer administered on a specific date but instead may be taken, at the applicant’s discretion, at any point within (usually) a twelve-month period. When the application was for an exam offered on a specific date, if the applicant did not register, appear for the exam, or pay the exam seat fee, the application naturally expired, as the date of the examination had passed. Failing the exam has only been one of several ways in which an application expires. This item therefore imposes no “new” restrictions on application validity, it merely updates the rule to reflect the changed nature of exam administration.
- **Item G:** As noted under item E, if the rule change related to direct registration for the FSS exam is adopted, soil science-in-training certification must appear under item G and not item E.

Subpart 2: The Board collects an exam administration fee for only one exam: the MNLS. The Board collects the MNLS exam fee only *after* determining the individual meets the requirements to sit. The Board collects no licensure fee nor certificate as a certified interior designer fee unless the individual is already approved; it has no authority to do otherwise. There may have been a time when “exam fee” and “license fee” refund language was necessary, but it is obsolete now. The Board is therefore striking all but the relevant statement that “Application fees are not refundable.”

Subpart 4: In 2019, the Office of the Legislative Auditor made a finding that the Board was over-recovering funds. Since then, the Board has made rule and administrative changes to reduce fees. The Board has identified the increased late fee after four months of a lapsed license as a fee that can be reduced. The \$30 fee remains in place and provides a deterrent. If holding out or unlicensed practice occurs during the lapse, the Board has other disciplinary options. The Board has the authority under Minnesota Statutes 16A.1283, clause (c), to make this fee reduction.

Subpart 7, item A: As noted above, the Board is reducing or eliminating fees, where possible. The application fee for initial applications is \$75; for licensure under Minnesota Statutes, section 326.10, subdivision 1, clause (2), it is \$100. The staff and Board time to handle the two applications is similar. There is no reason not to reduce the \$100 fee to \$75. The Board has the authority under Minnesota Statutes 16A.1283, clause (c), to make this fee reduction.

Subpart 7, item C: The Board no longer collects this fee; however, it is still in rule. Given that the Board is reducing or eliminating fees where possible and given that the Board has ceased to collect the fee, this item should be struck. The Board has the authority under Minnesota Statutes 16A.1283, clause (c), to make this fee reduction.

Subpart 7, item E: This item is the only place in the chapter where the exam administrator is referred to as the “national testing agency.” “Exam administrator” is consistent and accurate.

PART 1800.0600 CERTIFICATE OF REGISTRATION.

The changes are all housekeeping.

PART 1800.0800 PROOF OF QUALIFICATION TO PRACTICE.

The changes are all housekeeping, with the exception of the substitution of “the MNLS” for “the local professional practice,” which is vague. The examination in this section is specifically the MNLS examination and so is best stated as “the MNLS.”

PART 1800.0850 COMITY APPLICATION PROCEDURES.

The revisor has made structural changes to the part.

Item C: The item has been added to assist the Board in meeting its statutory requirement to license individuals from other countries who would otherwise meet the requirements in statute and rule. Degree evaluation language has been added to the rules for some but not all of the professions the Board regulates, as only some professions historically have had foreign-degree applicants. The Board needs standard language now, and for all the professions. As the Board cannot be expected to have the expertise to evaluate foreign transcripts, item C both codifies the acceptance of foreign education and provides an independent and reliable means by which the Board may determine equivalency: by using an evaluation service. This language—and other language in additional rule parts further along in this document—clarifies for foreign degree applicants what they need to do and assures them that the Board’s process for determining equivalency will be impartial.

PART 1800.0900 QUALIFICATION PROCEDURES.

Subpart 1. Exhibits: The revision is cleaner and clearer and does not change the meaning of the subpart or impose additional requirements on any applicant.

Subpart 4. Reexamination: The Board would strike the requirement that applicants provide “evidence of improved qualifications” before being allowed to sit after failing the exam three or more times. The rule is vague (What qualifies as evidence? What will constitute improved?) and unnecessary. The Board no longer need concern itself as to whether a seat may be denied a better-prepared applicant: Seat availability and testing opportunities for the professions are no longer so limited as to create such potential harm. A Board-approved applicant can and should determine for themselves whether they are prepared to sit for the exam.

Subpart 5: The Board does not conduct oral interviews as a means of examination. The language is obsolete. The rest of the revision removes the passive voice. Other modifications reflect that most applicants receive their notice to sit directly from the exam administrator, not the Board, and that it is the applicant’s responsibility to schedule with the exam administrator.

Subpart 6: The revisor has restructured the subpart.

PART 1800.1000 EDUCATION AND EXPERIENCE.

Subpart 1a: The change is housekeeping related.

Subpart 5: The change is structural and for clarity only. Three options for meeting the education requirements currently exist in rule: a degree that is 1) NAAB-accredited or 2) CACB-accredited, or 3) evaluated and determined to be NAAB-equivalent (evaluated degree may be domestic or foreign). Each is now easily identified.

Subpart 6:

- The revisor has restructured the subpart.
- Item A, subitem 2, unit (a): The document incorporated by reference is updated.
- Part 1800.1000 describes education and experience requirements for licensure under part 1800.0200, item B, (“initial licensure”), not under part 1800.0200, item A. The previously numbered subitem (3) is obsolete in reference to initial licensure and has been struck.

Subpart 7: The change is housekeeping related.

PART 1800.1100 PROCEDURES.

Subpart 2: Part 1800.1100 describes procedures for licensure under 1800.0200, item B (“initial licensure”), not under part 1800.0200, item A. The Board requires under part 1800.1000 submission of an NCARB record to document the applicant’s experience. The record already includes the experience documentation. The Board has therefore struck the obsolete reference to submitting experience on forms provided by the Board. The modifications clarify that an NCARB record is required for initial licensure and that the record should contain the evidence that other requirements in Board rule have been met. The modifications further clarify that the applicant need not send transcripts to the Board if the transcripts necessary to document education qualifications are already in the NCARB record.

These changes clarify and simplify the process for initial licensure, as otherwise applicants would need (or assume they need) to send to the Board duplicates of documents that they have already submitted to NCARB.

PART 1800.1200 EXAMINATION.

The changes are generally housekeeping, with “ARE” before “examination” in item B to clarify which examination is meant.

PART 1800.1500 EDUCATION AND EXPERIENCE.

The Council of Landscape Architectural Registration Boards (CLARB) recently recommended a plan to increase the number of paths to licensure as a landscape architect. The object was a “universal standard” for licensure. For reference, the *CLARB Uniform Licensure Standard* (April 20, 2022) alternative education language is as follows:

“In lieu of a degree in landscape architecture accredited by LAAB, LAAC, or their international equivalent, an applicant must obtain six (6) additional years of experience in the regulated practice of landscape architecture under the direct supervision of a licensed landscape architect or a licensed professional in a related field or, if eligible, an applicant may earn credit toward the remaining years of experience in regulated practice through one of the following options:

A. If an applicant holds a non-accredited degree or certificate in landscape architecture, then the applicant may be credited with one (1) year of experience for each year of schooling completed up to a maximum of four (4) years of credited experience, OR

B. If an applicant holds any degree or certificate, then the applicant may be credited with six (6) months of experience for each one (1) year of schooling completed up to a maximum of two (2) years of credited experience.

Although the *CLARB Uniform Licensure Standard* was adopted on April 20, 2022, support was divided, with the Minnesota Board joining those expressing concerns before and during the adoption process that the “standard” was too broad, vague, and in points inconsistent.

A primary concern was that the options did not so much set a minimum competency standard as create options that included all existing standards in all jurisdictions that are now part of CLARB. This is problematic given that, unlike professional engineers, for example, the requirements across jurisdictions are *highly* variable. In some jurisdictions, and under the adopted standard, the minimum requirements are more like those for an occupation than a profession.

For public protection, competency must encompass education that extends beyond aesthetic considerations and the ability to manage small residential projects. The education must be robust enough to encompass “consideration and determination of inherent problems of the land relating to erosion, wear and tear, blight and hazards” (Minnesota Statutes 326.02, subdivision 4a) for large public projects.

As a multi-profession board, the Minnesota Board had the advantage of direct and practical comparison of competency standards and practice across its distinct yet inter-related professions. With that insight, other concerns regarding the CLARB standard kept the Board from adopting its recommendations wholesale. For example, while it seems appropriate that someone holding an accredited degree in landscape architecture would need the least experience (2 years), the standard then equates the rigorous EAC-ABET accredited engineering and NAAB-accredited architecture degree as requiring the same experience, for example, as a BA in English or Teaching or Biology (6 years). At

the same time, the standards allow a Professional Engineer or Architect to verify the experience a landscape architect applicant needs for licensure. Such a tack is at best inconsistent.

The above is to illustrate how the Board thoughtfully debated the CLARB Uniform Licensure Standard and came to its own final rule proposals for additional Landscape Architect licensure paths.

The Board is adding seven additional education paths, plus an education evaluation option for foreign applicants who do not hold a degree accredited by LAAB, LAAC, NAAB, or EAC-ABET. Additionally,

- The Board is following recommendations in the standard to reduce the years of experience required for those holding the highest levels of education.
- The CLARB standard now allows for experience to be under an Architect or Professional Engineer, not just under a Landscape Architect. Current Board rule already allowed for this, for up to one year of experience.

LA Education	LA Experience		
	Current Board Rule	Board Rule Proposed	CLARB 2022 Standard
LAAB masters or doctorate*	3	2	2
LAAC masters or doctorate	N/A	2	2
LAAB 5-year baccalaureate*	3	2	2
LAAC 5-year baccalaureate	N/A	2	2
LAAB 4-year baccalaureate*	4	2	2
LAAC 4-year baccalaureate	N/A	2	2
• NAAB-accredited degree (MArch or BArch) or • EAC-ABET-accredited degree (architectural, structural or civil engineering disciplines)	N/A	4**	6
<i>Applies to the proposed options below:</i> "Foreign education equivalency"	N/A	As per education	As per education
non-accredited BLA or MLA	N/A	4	4
Other non-accredited BA	N/A	6	6
2-year LA associates degree	N/A	6	6
2-year LA certificate***	N/A	NOT PROPOSED	6
Non-LA certificate (presumed two year, but model law unclear)	N/A	NOT PROPOSED	8
"No completed secondary education"	N/A	NOT PROPOSED	8

Education options in bold are the additional education paths the Board is proposing.

* In addition to expanding education paths, the Board is reducing the number of years of experience for education paths in current rule.

** The Board differs from the CLARB standard, setting 4 years as the required education for this education path.

*** "LA Certificate" is vague and undefined in CLARB Uniform Licensure Standard. As written, anyone could establish a program and call it an "LA certificate program." A 2-year LA associates degree is not specifically delineated in the CLARB Uniform Licensure Standard but is presumed to be at minimum equivalent to a "2-year LA certificate" in terms of required experience. It therefore earns 2 credits towards an 8-credit combined "education and experience" requirement, meaning 6 years of experience is required.

Subpart 3: The subpart is restructured to itemize the education requirement options. Item B provides the direction for those holding a foreign degree to have their education evaluated for equivalency.

Subpart 4: The subpart is restructured, with item A listing the experience requirements corresponding to the education options in subpart 3 and with items B through D including changes necessary to properly describe and cite the other subparts. “Landscape architect” is struck under item D, subitem 3, as unnecessary.

Subpart 6: The revisor has restructured the subpart. The subitems (1) through (4) under item A match the language in the CLARB standard. In the Board’s evaluation, there is no substantive difference between the experience elements as listed in the current rules and subitems (1) through (4) in the proposed rules. The Board therefore proposes to match the language in the standard.

PART 1800.2100 EDUCATION AND EXPERIENCE.

Subpart 1: The changes are all housekeeping related.

Subpart 2: The revisor has restructured the part. The modifications make no changes to the requirements; the options for meeting the requirements are merely organized more clearly.

- **Item A, subitem (1):** The “equivalency” referred to in new units (a) through (c) is codified as item (d) and is the “at minimum ... substantially equivalent” education referred to in subitem 1. An education evaluation option for foreign degree is provided in unit (e). The Council for Interior Design Qualification (CIDQ) already requires an evaluation before the foreign degree candidate is allowed to sit for the exam, and CIDQ uses the same education minimum requirement as the Board for that evaluation. In accepting this evaluation, the Board maintains public protection and simplifies the path to licensure for foreign degree applicants.
- **Item A, subitem (2):** The opening paragraph is rewritten for clarity. The units have updated citations.

PART 1800.2200 PROCEDURES.

PART 1800.2500 EDUCATION AND EXPERIENCE.

The changes are all housekeeping related.

PART 1800.2700 EXAMINATION

Part heading and Subpart 1: The changes are housekeeping related.

Subpart 1a: A rule change in 2019 allowed candidates for the Fundamentals of Engineering (FE) exam to register directly with the exam administrator to sit. Previously, the candidate first applied to the Board in order to sit as a Minnesota candidate. The Board is clarifying by inserting “as a Minnesota

candidate” into the requirements that the Board will only issue—as historically it has only issued—an engineer-in-training (EIT) certificate to candidates *who specified Minnesota as their jurisdiction* when they applied to the exam administrator to sit. As previously noted, holding an in-training certificate is not required for licensure in Minnesota. As previously noted, the Board has a mandate from the Office of the Legislative Auditor to address the issue of over-recovery. As previously noted, Minnesota Statutes 13.05 stipulates that the responsible authority only “collect and store ... private and confidential data ... limited to that necessary for the administration and management of programs.” An individual who sat for the FE exam as the candidate for another jurisdiction can apply to that jurisdiction for an EIT certificate.

PART 1800.2805 QUALIFYING EXPERIENCE DEFINED.

Subpart 1, Item E: Experience was decoupled from examination for engineers in March 2020. That means applicants may now apply to sit for the professional exam prior to submitted their experience to the Board. This item is therefore incorrect/obsolete and must be struck.

PART 1800.2900 PROCEDURES.

Subpart 1: The changes are housekeeping related.

Subpart 1a: The rationale for this subpart change is identical to that of part 1800.2700, subpart 1a, above.

Subpart 2: The proposed change modifies “unless previously submitted” to include “within the last year.” If the application has expired, the transcripts must be resubmitted, as the Board will have destroyed the application and related records in accordance with its records retention schedule. The Board does not hold these particular records indefinitely, which the rule currently seems to imply. The change provides clarity for re-applicants.

Subpart 5: The revisor has restructured the subpart. All changes are housekeeping.

Subpart 6: The changes are housekeeping.

Subpart 7:

- The changes to items B through E are housekeeping.
- **Item F:** The background to this change is as follows: Part 1800.2500, subpart 2, items B and D, allows a person who has not yet completed their required education but has met the requirements in one of those items to apply to the Board to sit for the FE exam (such applicants cannot register directly with the exam administrator). Such applicants currently constitute less than 10% of all who sit for the FE as a Minnesota candidate. While the Board will then approve such a person to “sit early,” the Board will not, as per part 1800.2700, issue an EIT certificate

after the applicant has passed the exam until after proof of *completing* one of the required education options in part 1800.2500, *subpart 2a* is provided to the Board.

The modification seeks to establish a deadline by which the transcript must be received by the Board or the application expires. The modification is necessary because some examinees—despite notification from the Board—fail to submit a final official transcript in a timely fashion. Not infrequently they never submit them.

Rule is silent and therefore so also is the Board’s record retention schedule as to how to handle these applications. When the Board used to administer these exams and before NCEES began retaining the exam data themselves in 2011, the Board had to retain the passing grade and therefore the file. These files contain essentially all private data, as these individuals are not licensees. The Board has been holding these applications “open” indefinitely.

Given that NCEES now retains exam results and the Board has an EIT application option, the Board proposes that applications be marked incomplete/expired if the applicant does not provide the final official transcripts within one year of the examination date. To meet the education requirements to sit early, the applicant must have already begun their final year (as in item B: “within ... 32 semester credits” of graduation). Applicants also have up to 3 years after applying to *take* the exam. Therefore, a one-year deadline based upon the examination date provides reasonable time for the applicant to submit the necessary transcript. If the applicant does *not* provide the transcript, the Board can then close the application and properly manage the related private data, following the records retention policy for incomplete/expired applications.

This change does not prevent the examinee from receiving an EIT. The applicant who failed to meet the deadline would simply open an EIT application and receive the EIT by that means—after providing the missing official transcripts. The change does not impede licensure, as the passing grade and transcript are accessible (from NCEES and from the educational institution respectively) to the applicant for transmittal to the Board.

PART 1800.3505 EDUCATION AND EXPERIENCE.

Subpart 1: The changes are housekeeping related.

Subpart 2: The revisor has restructured the subpart. All changes are housekeeping related, with the exception of the newly numbered item B. As noted elsewhere in this rule-by-rule analysis and with the same rationale, the Board is codifying provisions for foreign degree evaluation.

Subpart 3: The revisor has restructured the subpart. The changes are housekeeping related.

PART 1800.3700 EXAMINATIONS.

Subpart 2: The changes are housekeeping related.

Subpart 3: This subpart refers to the MNLS exam. The changes make that fact explicit.

PART 1800.3750 PROCEDURES.

Subpart 2: As noted for the same change to part 1800.2900, subpart 2: The proposed change modifies “unless previously submitted” to include “within the last year.” If the application has expired, the transcripts must be resubmitted, as the Board will have destroyed the application and related records in accordance with its records retention schedule. The Board does not hold these particular records indefinitely, which the rule currently seems to imply. The change provides clarity for applicants.

PART 1800.3910 EDUCATION AND EXPERIENCE.

Subpart 1: The revisor has restructured the subpart. The changes are housekeeping related.

Subpart 3: All changes are housekeeping related, with the exception of the newly numbered subitem (3). As noted elsewhere in this rule-by-rule analysis and with the same rationale, the Board is codifying provisions for foreign degree evaluation. A subject analysis report is specifically required for the geoscience profession so that the Board may compare the evaluation directly to the course content requirements in part 1800.3910, subpart 5.

Subpart 5: The changes are housekeeping related.

PART 1800.3920 EXAMINATION.

Part heading and Subpart 1: The changes are housekeeping related.

Subpart 2:

- The proposed rule would allow individuals to apply directly to the exam administrator to sit for the FSS examination. As this part refers to both the Fundamentals of Geology (FG) and FSS, the changes “who has applied to the board to take...” and “by the board.” are necessary to subpart 2 to make the process distinction clear.
- The same rationale as in part 1800.2700, subpart 1a, applies to the insertion of “as a Minnesota candidate” in this subpart: The Board is clarifying by inserting “as a Minnesota candidate” into the requirements that the Board will only issue—as historically it has only issued—a geologist-in-training (GIT) or soil scientist-in-training (SSIT) certificate to candidates who indicated Minnesota as their jurisdiction when they applied to the exam administrator to sit. As previously noted, holding an in-training certificate is not required for licensure in Minnesota. As

previously noted, the Board has a mandate from the Office of the Legislative Auditor to address the issue of over-recovery. As previously noted, Minnesota Statutes 13.05 stipulates that the responsible authority only “collect and store ... private and confidential data ... limited to that necessary for the administration and management of programs.” An individual who sat for the FG or FSS exam as the candidate for another jurisdiction can apply to that jurisdiction for a GIT or SSIT certificate.

Subpart 4: The proposed rule would allow individuals to apply directly to the exam administrator to sit for the FSS examination. In addition to housekeeping changes, the changes to this subpart introduce language necessary to allow for direct registration to the exam administrator.

PART 1800.3930 PROCEDURES.

This part has been restructured and organized to separate the procedures for the soil science profession and the geology profession, which are necessary to allow to for the procedural differences created by direct registration for the FSS exam.

Subparts 1, 1a, 1b: The Board’s rationale for allowing direct registration of the FSS exam primarily springs from changes in the administration of the exam by the exam developer, the Council of Soil Science Examiners (CSSE). CSSE is now offering the FSS exam year-round. Per current Board rule, the exam is proctored by the Board, twice per year. Candidates from other jurisdictions may now take the exam at any time throughout the year.

For the Board to allow Minnesota exam candidates to sit year-round, changes to rule were required. In reviewing the required changes, the Board made the further determination that there is no harm to the public and it provides even more flexibility to future licensure applicants to allow direct registration for the FSS exam. The path would be similar to that for FE exam candidates, most of whom may apply direct and only return to the Board if they want an in-training certificate or if they want to pursue licensure.

The part has therefore been restructured so that subpart 1 and a new subpart 1a address direct registration for the FSS and how to obtain an in-training certificate, if desired. A new subpart 1b addresses the FG admission process and is unchanged, except for the removal of language related to soil science and the addition of language to specifically refer to geology.

Subpart 2:

- The language regarding the application deadline is struck here and moved to a new subpart 2a, the rationale for which follows.
- The other changes are housekeeping only.

Subpart 2a: The Board accomplishes two things with the addition of this section:

- 1) The changes allow for the real possibility that one of the geoscience professional exams may convert to “year-round” versus “specific-date” administration. The professional examinations are under the aegis of different councils. Their decision-making is independent of the other. It is prudent for the Board to add the language now. The changes have no adverse effect on public protection. The changes have no current effect on applicants but would benefit them in future.
- 2) The rules are structured similar to how the engineering rules, which must deal with both year-round and specific-date exam administrations (depending upon the exam discipline). Such consistency is logical and should be helpful to all parties.

These proposed rules create *no procedural or requirement changes* to the “specific date” administration when compared to the current rules. The proposed rules provide information regarding registering to sit for an exam, what constitutes a passing grade, and examination windows/frequency, all of which information benefits the applicant by providing clarity.

Subpart 3, items B through D: As with subpart 2a, with year-round examinations, new language is needed to describe when an application expires (see the rationale for part 1800.0500, subpart 1, item F). As with subpart 2a, the model for these proposed rules is the engineering rule parts (see part 1800.2900, subpart 7). There is no fundamental change to application validity created by these rule changes. Making application validity consistent between the professions is appropriate, as there is no reason that they would not be consistent.

PART 1800.4000 CERTIFICATES OF RECORD FOR IN-TRAINING CLASSIFICATION.

The part includes housekeeping change. The rationales for the part description and other changes (clarifying what “certificate” means; providing in-training classification only to applicants who sat for their exams as a Minnesota candidate) have already been related.

PART 1800.4100 CERTIFICATE OF LICENSURE OR CERTIFICATION.

The changes to the parts are either housekeeping or relate to substituting the phrase “under Minnesota Statutes, section 326.10, subdivision 1, clause (2),” for “by comity.” The rationale for the latter can be found at the beginning of this rule-by-rule analysis.

REPEALERS

PART 1800.1100, SUBPART 4

The subpart is unnecessary and essentially obsolete: It reflects a time when some applications could be obtained as an online PDF and others only as a paper form. As this specific statement only appears for two professions, it is also inconsistent. The statement that forms are “provided by the Board,” which is reiterated throughout the chapter, suffices.

PART 1800.2700, SUBPART 5

The subpart is obsolete. The board no longer administers the exam; it does not control what equipment the exam administrator permits. What equipment is permitted is communicated by the exam administrator.

PART 1800.2900, SUBPART 4

The subpart is unnecessary and essentially obsolete: It reflects a time when some applications could be obtained as an online PDF and others only as a paper form. As this specific statement only appears for two professions, it is also inconsistent. The statement that forms are “provided by the Board,” which is reiterated throughout the chapter, suffices.

PART 1800.3920, SUBPART 5

The subpart is obsolete. The board no longer administers the exam and/or does not control what equipment the exam administrator permits. What equipment is permitted is communicated by the exam administrator.

CONCLUSION

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

March 29, 2023

Date

Doreen Johnson

Doreen Johnson
Executive Director