



TO: The Honorable Members of the Board of Regents

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

SUBJECT: Proposed Technical Amendment of Section 68.3 of the Regulations of the Commissioner of Education Relating to the Requirements for Admission to the Examination for Licensure as an Engineer

DATE: June 1, 2023

AUTHORIZATION(S): *Donna A. Bellizzi*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed technical amendment of section 68.3 of the Regulations of the Commissioner of Education relating to the requirements for admission to the examination for licensure as an engineer?

Reason for Consideration

Required by State statute (Chapter 465 of the Laws of 2021).

Proposed Handling

The proposed technical amendment is submitted to the Full Board for adoption as an emergency rule at the June 2023 meeting of the Board of Regents. A copy of the proposed rule (Attachment A) and a statement of facts and circumstances justifying emergency action (Attachment B) are attached.

Procedural History

The proposed amendment was presented to the Professional Practice Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at the April 2023 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on May 3, 2023, for a 60-day public comment period. Supporting materials are available upon request from the Secretary to the Board of Regents.

Because the April emergency action will expire on July 16, 2023 a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the July Regents meeting. A Notice of Emergency Adoption will be published in the State Register on August 2, 2023. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

Chapter 465 of the Laws of 2021 (Chapter 465), effective April 6, 2022, amended provisions of the Education Law regarding the profession of engineering. Generally, it updates engineering licensure requirements to reflect modern practice requirements and promote uniformity for the profession.

Chapter 465 phases out the existing “all-experience” pathway, which permitted candidates with 12 years of working experience to obtain licensure without any formal education. To ensure a smooth transition for pipeline candidates, Chapter 465 permits persons currently seeking licensure under this pathway to submit a licensure application with the appropriate fee to the Department by April 6, 2024 (two years after the effective date of the law) to preserve their potential ability to qualify for licensure based on such experience. Although regulatory amendments were adopted by the Board of Regents to reflect these statutory changes at the July 2022 Regents meeting, the regulations are silent relative to the ability of those still meeting the “all experience” pathway to sit for the fundamentals of engineering examination.

Therefore, the Department now proposes to amend section 68.3 of the Commissioner’s regulations to reflect the intent of Chapter 465 by allowing “all experience” pathway applicants to sit for the fundamentals of engineering examination provided that they meet the pathway’s requirements prescribed in section 68.1(c) of the Commissioner’s regulations.

Related Regents Items

April 2023: [Proposed Technical Amendment of Section 68.3 of the Regulations of the Commissioner of Education Relating to the Requirements for Admission to the Examination for Licensure as an Engineer](https://www.regents.nysed.gov/sites/regents/files/423brca9.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/423brca9.pdf>)

July 2022: [Proposed Repeal of Section 68.1 and Addition of a New Section 68.1 and Amendment of Section 68.3 of the Regulations of the Commissioner of Education Relating to the Licensure Requirements for Professional Engineers](https://www.regents.nysed.gov/common/regents/files/722brca22.pdf)
(<https://www.regents.nysed.gov/common/regents/files/722brca22.pdf>)

Recommendation

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

VOTED: That section 68.3 of the Regulations of the Commissioner of Education be amended, as submitted, effective July 17, 2023, as an emergency rule upon a finding by the Board of Regents that such action is necessary for the preservation of the general

welfare to immediately conform the Commissioner's regulations to Chapter 465 of the Laws of 2021, which became effective April 6, 2022, and to ensure the emergency action taken at the April 2023 meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the July 2023 Regents meeting, the emergency rule will become effective on July 17, 2023. It is anticipated that the proposed rule will be presented for adoption at the July 2023 Regents meeting after expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the July meeting, the proposed rule will become effective as a permanent rule on August 2, 2023.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, and 7206 of the Education Law and Chapter 465 of the Laws of 2021.

Subdivision (b) of section 68.3 of the Regulations of the Commissioner of Education is amended to read as follows:

(b) Admission to examinations.

(1) To meet the requirements for admission to the fundamentals of engineering examination, an applicant shall either:

(i)...

(ii)...

(iii) have met the education requirement of 68.1(b)(4) or (5); or

(iv) as prescribed in section 68.1(c) of this Part, have earned at least six education/experience credits and submitted an application for licensure with the required fee to the department prior to April 6, 2024,

(2)...

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH
NECESSITATE EMERGENCY ACTION

The Department proposes to amend section 68.3 of the Commissioner's regulations to reflect the intent of Chapter 465 of the Laws of 2021 by allowing the "all experience" pathway applicants to sit for the fundamentals of engineering examination provided that they meet the pathway's requirements prescribed in section 68.1(c) of the Commissioner's regulations.

The proposed amendment was presented to the Professional Practice Committee for recommendation to the Full Board for adoption as an emergency rule at the April 2023 meeting of the Board of regents, effective April 18, 2023. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) action after expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the July 2023 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the July 2023 meeting, would be August 2, 2023, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on July 16, 2023. Therefore, a second emergency action is necessary at the June 2023 meeting, effective July 17, 2023, for the preservation of the general welfare to immediately conform the Commissioner's regulations to Chapter 465 of the Laws of 2021, which became effective April 6, 2022, and to ensure that the emergency action taken at the April meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the July 2023 Regents meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rule making.