

VOLUME 44, ISSUE 13

ISSUE DATE: **JULY 2, 2012**

RULE ADOPTIONS

**LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

44 N.J.R. 1901(a)

Adopted Amendments: N.J.A.C. 13:40-2.15, 11.2, 11.3, 11.9, and 12.4

Adopted New Rules: N.J.A.C. 13:40-13

Biennial License Renewal; License Suspension; Reinstatement of Suspended License; Inactive Status; Credit-Hour Requirements; Dual Licensees; License Restoration; Resumption of Practice; Professional Engineers Continuing Competency Requirements

Proposed: January 3, 2012 at 44 N.J.R. 37(a).

Adopted: March 15, 2012 by the State Board of Professional Engineers and Land Surveyors, James K. Valenti, P.E., President.

Filed: June 4, 2012 as R.2012 d.123, **without change**.

Authority: N.J.S.A. 45:1-15 and 45:8-35.11 through 45:8-35.19.

Effective Date: July 2, 2012.

Expiration Date: July 12, 2018.

Summary of Public Comments and Agency Responses follows:

The official comment period ended March 3, 2012. The Board received six comments from the following individuals:

1. Norman Coltri, P.E.
2. Edmund L. Baum, P.E.
3. Karl J. Hunzer, P.E., CEM
4. Robert Cenker, P.E.
5. Richard Sherrer, P.E.
6. Charles Silverstein, PE, County Traffic Engineer, County of Passaic

1. COMMENT: A commenter asked whether, pursuant to N.J.A.C. 13:40-13.5, the Board would consider accepting a provider who is an authorized provider of continuing education units by the International Association for Continuing Education and Training (IACET). The commenter stated that providers certified by IACET have demonstrated that they comply with the IACET standards, which are widely recognized as standards of good practice internationally. The commenter noted that IACET is accredited by the American National Standards Institute (ANSI) and is currently listed as an accepted provider certification by many professional boards.

RESPONSE: Pursuant to N.J.A.C. 13:40-13.5(a), a provider seeking Board approval to sponsor equivalent educational programs for continuing professional competency (CPC) credit may submit an application that includes course and program descriptions, instructor qualifications, locations, dates and times of courses, and other information required by the Board. The Board will review the application and if approved, the provider is issued an approved provider letter. Providers that have been certified by IACET may apply to the Board for approval by this method.

2. COMMENT: A commenter offered his support for the continuing education requirement and welcomed the continuing education [page=1902] regulations. He hoped that the Board "considers consistency with the other state engineering boards and to that extent follows the [National Council of Examiners for Engineering and Surveying] NCEES national law." The commenter thought that the regulations were fairly consistent with other states, except for the requirement that a licensee take at least two credits in professional practice ethics. He did not object to this requirement so long as it remained general and not State specific. He asked that the Board not mandate registration with the national tracking firms because they charge a fee. He also asked that licensees not be required to list each individual course taken when renewing on-line because it would be time consuming.

RESPONSE: The Board thanks the commenter for his support. The Board considered the NCEES model rules in drafting its rules and hopes that licensees find that the rules are consistent with the continuing education regulations in other states. The Board does not intend to mandate the use of national tracking firms. The Board will not require licensees to list each course completed on their biennial renewal application; however licensees must retain this information in case they are audited. Although N.J.S.A. 45:8-35.12c mandates that two of the 24 required CPC credits to be completed each biennial renewal period be taken in professional practice ethics, it does not require that the courses be specific to New Jersey.

3. COMMENT: Three commenters objected to the lack of adequate notice to licensees of the continuing education (CE) requirements for this biennial renewal period. One commenter supported the requirement of continuing education, because it will provide a higher level of technical expertise for practicing engineers. However, he objected to the timing of the requirement, and noted that when Pennsylvania implemented its professional education requirement, notices were sent out well in advance of the license renewal timeframe. He wanted to know how licensees are expected to comply when only several months remain to complete the training. He noted that the Association of Energy Engineers (AEE), of which he is a member, and from which he has already earned many professional development hours of training, applied to be approved as a provider in May, 2011, but will not be reviewed by the Board until the rules have passed. He felt that this put energy engineers seeking license renewal in April, 2012 in an unfair position to comply with the continuing education requirement.

Another commenter was disappointed that the Board did not notify licensees about the new rules when they were first enacted. He stated that if a person did not belong to an engineering society, there was a chance that the person would not even know about the new requirements. He suggested that the Board communicate with licensees about the ever-evolving requirements, and, if mail is too costly, to e-mail licensees.

RESPONSE: The Board believes that it has provided adequate notice to its licensees of the continuing competency requirements. On March 8, 2010, the Board posted on its website a copy of P.L. 2009, c. 294, which mandated continuing competency requirements for professional engineers. The Board also posted an alert on its website in late August of 2010, explaining that licensees will be expected to complete 15 continuing professional competency credits on or before April 30, 2012, to meet the requirements for the 2012-2014 biennial renewal period.

The Board will accept continuing education credits for courses completed to satisfy out-of-State continuing education requirements, so long as the courses directly and materially relate to the practice of professional engineering; are not required for initial licensure; and do not involve practice building, practice management, or practice marketing. The Board also notes that there is no restriction on the number of credits that may be earned through distance learning courses, so licensees may earn their credits by completing on-line courses from their homes or offices.

Initially, the Board had planned to review courses for approval. The Board suspended its review while the rules were being drafted, however, because the Board determined that it would exempt from review those courses offered by providers listed in proposed N.J.A.C. 13:40-13.5(c). The Board determined that it would establish a procedure under proposed N.J.A.C. 13:40-13.5(a) and (b) for reviewing courses offered by providers that were not exempt. To the extent that licensees completed courses that required approval pursuant to N.J.A.C. 13:40-13.5(a) and (b), the Board wishes to assure those licensees that it is highly unlikely that any adverse action would result during this 2012 biennial renewal cycle, because the Board understands that licensees may have been confused about the CE requirements prior to the publication of the Board's rules.

4. COMMENT: A commenter opposed the continuing education requirements because he believed that he has already met the requirements for holding a license, and that it was wrong to change these requirements after the fact. He stated that had he known that he would have to continue to accumulate credits, he likely would not have started on the road to licensure. He believed that if the Board wished to mandate taking additional courses, that the Board should create an enhanced credential, for example a "PE+" qualification. He believed that there should be a separate credential for professional engineers who simply want to carry the license as a credential, but not engage in sealing documents. He also recommended that the Board enact a "grandfather clause" to exempt those professionals already holding an active license from the continuing education mandate.

The commenter believed that politics is the driving force behind the mandate. He implored the Board to make the decision based on reason and logic without politics and emotion. He questioned the integrity of the data used to support the mandate. He argued that attending courses, seminars, teaching a class, or writing a technical paper does not ensure that the public will be safer. He also questioned whether the Board has mandated these rules to simply fall in line with other states. He believed, from speaking with licensees in other states that mandate continuing education, that the classes have no value, and that licensees simply wait until the last minute to take the necessary course on-line because they don't have the time to put towards other alternatives. He also argued that the only measurable value as a result of applying these rules is the profit taken by educational contractors and similar businesses.

The commenter felt that "education must be specific to the scope of work for which each individual represents." He believed the ethics code's prohibition on engineers working outside of their experience should be the proper driver for the need for additional education.

The commenter also felt that the notion that a recurring ethics class will maintain a high ethical standard is ludicrous. He believed that if an employer requires a frame of reference as to how a licensee conducts his or her business, the employer can request references, or research the licensee's performance on past projects. The commenter stated that he passed an ethics class to obtain his license, and he abides by the ethics code. He argued that a recurring ethics class is not going to change an individual's integrity level, and if an individual requires recurring ethics instruction, he or she is never going to meet the ethical standard of a professional engineer.

RESPONSE: The Legislature mandated that professional engineers complete CPC credits in order to maintain their licenses. N.J.S.A. 45:8-35.11 requires that each licensed professional engineer complete not more than 24 credits of continued professional competency relating to the practice of professional engineering during each biennial registration period. N.J.S.A. 45:8-35.12c states that two of the 24 credits of professional competency are to be in professional practice ethics. N.J.S.A. 45:8-35.14 states that the Board may, in its discretion, waive the CPC requirements on an individual basis for reasons of hardship. The statute provides the following examples of reasons of hardship: illness or disability, service in the armed forces, retirement of the license, or other good cause. The statute does not confer any type of enhanced license status upon completion of CPC credits. The statute does not contain a "grandfather" provision that would exempt current licensees from meeting the CPC requirements. Nor does the statute provide an exemption for licensees who do not seal documents. The Board notes that if a licensee were to place his or her license on inactive status, the licensee would not have to fulfill the CPC requirements. However, under proposed N.J.A.C. 13:40-13.3(d), if the licensee were to later seek reinstatement of his or her license, the licensee would have to complete all delinquent CPC credits up to a maximum of 30 credits.

The Board's proposed rules implement the statute. And so the Board - even if it shared the commenter's view with regard to the value of the CPC requirements, which it does not - could not disregard the Legislature's mandate.

[page=1903] **Federal Standards Statement**

A Federal standards analysis is not required because the adopted amendments and new rules are not subject to any Federal standards or requirements.

Full text of the adoption follows:

SUB CHAPTER 2. APPLICATION REQUIREMENTS; LICENSING; BIENNIAL RENEWAL; INACTIVE STATUS

13:40-2.15 Biennial license renewal; license suspension; reinstatement of suspended license; inactive status

(a) All licenses issued by the Board shall be issued for a biennial license period. A licensee who seeks renewal of the license shall submit prior to the expiration date of the license a completed renewal application, the renewal fee as set forth in N.J.A.C. 13:40-6.1 and:

1. In the case of a land surveyor, a statement that the licensee has successfully completed the continuing competency requirements pursuant to N.J.A.C. 13:40-11; or

2. In the case of an engineer, a statement that the licensee has successfully completed the continuing competency requirements pursuant to N.J.A.C. 13:40-13.

(b) (No change.)

(c) If a licensee does not renew the license prior to its expiration date, the licensee may renew the license within 30 days of its expiration by submitting a completed renewal application, the renewal fee, and late fee as set forth in N.J.A.C. 13:40-6.1, and, in the case of a land surveyor, a statement that the licensee has successfully completed the continuing competency requirements pursuant to N.J.A.C. 13:40-11 and in the case of an engineer, a statement that the licensee has successfully completed the continuing competency requirements pursuant to N.J.A.C. 13:40-13. During this 30-day period, the license shall be valid, and the licensee shall not be deemed to be engaged in unauthorized practice.

(d) (No change.)

(e) A licensee whose license has been automatically suspended for five years or less for failure to renew pursuant to (d) above may be reinstated by the Board upon completion of the following:

1.-2. (No change.)

3. Submission of proof of completion of the continuing competency for each biennial licensure period for which the license was suspended.

(f)-(g) (No change.)

(h) A licensee who elected inactive status and has been on inactive status for five years or less may be reactivated by the Board upon completion of the following:

1.-2. (No change.)

3. Submission of proof of completion of the continuing competency required for each biennial licensure period for which the licensee was on inactive status.

(i) (No change.)

SUBCHAPTER 11. LAND SURVEYORS; CONTINUING COMPETENCY

13:40-11.2 Definitions

As used in this subchapter, the following terms shall have the following meanings:

...

"Continuing professional competency credit" or "CPC credit" means one hour of instruction.

13:40-11.3 Credit-hour requirements; dual licensees

(a)-(b) (No change.)

(c) Except as provided in (d) below, each person licensed as both a professional engineer and professional land surveyor shall complete at least 36 CPC credits relating to the practice of professional engineering and professional land surveying as a condition of biennial renewal. At least 12 of the required 36 credits must be completed in professional engineering, of which two, but no more than eight, shall be in professional practice ethics, and at least 12 credits must be completed in professional land surveying. The remaining 12 credits may be completed in either professional engineering or professional land surveying.

(d) For the renewal period beginning May 1, 2012, each person who is licensed as both a professional engineer and a professional land surveyor shall have completed at least 27 CPC credits relating to the practices of professional engineering and professional land surveying. At least 12 of the required 27 credits shall have been completed in professional land surveying, and at least 12 credits shall have been completed in professional engineering, of which two shall have been in professional practice ethics. The remaining three credits may have been completed in either professional engineering or professional land surveying.

13:40-11.9 License restoration

The failure on the part of a licensee to renew his or her biennial certificate as required shall not relieve such person of the responsibility to maintain professional competence. At the time of application for restoration, the licensee shall submit satisfactory proof to the Board that he or she has successfully completed all delinquent CPC credits. If the total credits required to become current exceeds 30, then 30 shall be the maximum number required. In the case of a person licensed as both a professional engineer and professional land surveyor, if the total credits required to become current exceeds 45, then 45 shall be the maximum number required. However, an additional 24 CPC credits (or 36 CPC credits in the case of a dual licensee) will still be required at the next biennial renewal. The credits required to become current shall not be counted towards the CPC credits required for the next biennial renewal.

SUB CHAPTER 12. RETIRED LICENSE AND NO-FEE RETIRED LICENSE STATUS

13:40-12.4 Resumption of practice

(a) A professional engineer or professional land surveyor who has been on retired license status or no-fee retired license status who wishes to resume the practice of professional engineering or professional land surveying shall forward the following to the Board:

1.-2. (No change.)

3. For a professional engineer or professional land surveyor who has been on the retired status list for five or more years, satisfactory evidence of current knowledge, competency, and skill in the practice of professional engineering or professional land surveying as follows:

i. (No change.)

ii. Each retired licensee seeking to resume practice shall submit satisfactory proof to the Board that he or

she has successfully completed all delinquent CPC credits. If the total credits required to become current exceeds 30, then 30 shall be the maximum number required. In the case of a person licensed as both a professional engineer and professional land surveyor, if the total credits required to become current exceeds 45, then 45 shall be the maximum number required. However, an additional 24 CPC credits (or 36 CPC credits in the case of a dual licensee) will still be required at the next biennial renewal. The credits required to become current shall not be counted towards the CPC credits required for the next biennial renewal.

SUBCHAPTER 13. PROFESSIONAL ENGINEERS; CONTINUING PROFESSIONAL COMPETENCY REQUIREMENTS

13:40-13.1 Continuing professional competency requirements

(a) Except as provided in (b) below, each applicant for biennial license renewal shall complete, during the preceding biennial period, 24 CPC credits as specified in N.J.A.C. 13:40-13.4, at least two, but no more than eight, of which shall be in professional practice ethics. Each applicant shall certify on the biennial renewal application form that he or she has completed, during the preceding biennial period, 24 CPC credits, subject to N.J.A.C. 13:40-13.3(a).

(b) For the renewal period beginning May 1, 2012, licensees shall have completed 15 CPC credits, of which two shall have been in professional practice ethics. A licensee who has completed CPC credits in courses meeting the requirements set forth in this section between May 1, 2010 and April 30, 2012, shall be permitted to apply such credits to qualify for the renewal of his or her license for the biennial period commencing on May 1, 2012.

[page=1904] 13:40-13.2 Definitions

As used in this subchapter, the following terms shall have the following meanings:

"Continuing professional competency credit" or "CPC credit" means one 60-minute clock hour of an educational activity with no less than 50 minutes of instructional content within the hour relating to the practice of professional engineering in accordance with N.J.S.A. 45:8-35.12(b).

"Educational program" means any advanced course offered in an ABET, Inc. (ABET) accredited program that directly and materially relates to the practice of professional engineering with the clear purpose and objective to maintain, improve, or expand the skills and knowledge relevant to the practice of engineering. Those courses that must be completed in order to qualify for initial licensure are not considered to be advanced courses and shall not be considered qualifying courses.

"Equivalent educational program" means a program, other than an educational program, relating to the practice of professional engineering with the clear purpose or objective to maintain, improve, or expand the skills and knowledge relevant to the practice of engineering. Equivalent educational programs include, but are not limited to:

1. Meetings of members and subgroups of professional engineering associations and other appropriate professional and technical associations when an engineering topic is presented as a principal part of the program;
2. Research and preparation of examinations, papers, or publications;

3. Presentation of technical presentations, management, leadership or ethics courses, or exhibits;
4. Management or leadership courses relating to a licensee's responsibilities pursuant to N.J.A.C. 13:40-9.1 or ethics courses;
5. Correspondence or distance learning courses on engineering topics where a final examination is required;
6. Teaching or instruction of a course for the first time or teaching a course previously taught if substantial time was spent updating the material;
7. Employer sponsored in-house courses;
8. Workshops and seminars at professional meetings and conferences; and
9. Courses taken at schools, universities, and colleges that are not part of an ABET accredited program.

13:40-13.3 Carry over of excess CPC credits; dual licensees; reinstatement of license

(a) A maximum of 12 CPC credits may be carried over into the next biennial renewal period.

(b) Except as provided in (c) below, each person licensed as both a professional engineer and professional land surveyor shall complete at least 36 CPC credits relating to the practice of professional engineering and professional land surveying as a condition of biennial renewal. At least 12 of the required 36 credits must be completed in professional engineering, of which two, but no more than eight, shall be in professional practice ethics, and at least 12 credits must be completed in professional land surveying. The remaining 12 credits may be completed in either professional engineering or professional land surveying.

(c) For the renewal period beginning May 1, 2012, each person who is licensed as both a professional engineer and a professional land surveyor shall have completed at least 27 CPC credits relating to the practices of professional engineering and professional land surveying. At least 12 of the required 27 credits shall have been completed in professional land surveying and at least 12 credits shall have been completed in professional engineering, of which two shall be in professional practice ethics. The remaining three credits may have been completed in either professional engineering or professional land surveying.

(d) A licensee seeking reinstatement in accordance with N.J.A.C. 13:40-2.15 shall submit proof of completion of all delinquent CPC credits for each biennial period for which the license was suspended or inactive. If the total credits required to become current exceeds 30, then 30 shall be the maximum number required. In the case of a person licensed as both a professional engineer and professional land surveyor, if the total credits required to become current exceeds 45, then 45 shall be the maximum number required. However, an additional 24 CPC credits (or 36 CPC credits in the case of a dual licensee) will still be required at the next biennial renewal. The credits required to become current shall not be counted towards the CPC credits required for the next biennial renewal.

13:40-13.4 Sources of CPC credits

A professional engineer may obtain the required CPC credits from educational programs or from equivalent educational programs sponsored by Board-approved providers as provided in N.J.A.C. 13:40-13.5. All educational programs and equivalent educational programs sponsored by Board-approved providers that directly and materially relate to the practice of professional engineering with the clear purpose to maintain, improve, or expand the skills and knowledge of the licensee relevant to the practice of professional engineering are approved for credit. Courses required for initial licensure or that primarily involve practice building, practice management, or practice marketing are not approved. The Board will post on its website at http://www.njconsumeraffairs.gov/pels/pels_licensee.htm a list of CPC providers that, pursuant to N.J.A.C. 13:40-13.5(a), have applied and have been approved to sponsor equivalent educational programs for the current biennial period. Regular duties are not considered qualifying activities for CPC credits.

13:40-13.5 Approval procedures for CPC providers; exceptions

(a) A provider seeking Board approval to sponsor equivalent educational programs for CPC credit shall submit an application on a form prescribed by the Board, that shall include course and program descriptions, instructor qualifications, locations, dates and times of courses, and other information as required by the Board, unless the provider is exempted from this requirement pursuant to (c) below. Upon approval, the Board will issue an approved provider number, which shall be used by the provider in identifying the courses and programs to be provided.

(b) A licensee seeking Board approval of equivalent educational programs for CPC credit for a provider that has not been approved pursuant to (a) above or (c) below, may submit an application on a form prescribed by the Board, which shall include course and program descriptions, instructor qualifications, locations, dates and times of courses, number of CPC credits, and other information as required by the Board. The Board shall notify the licensee, in writing, of its determination.

(c) Accredited schools, universities, and colleges; national and state professional engineering and closely allied professional organizations; and Federal, State, and New Jersey bi-state government agencies and independent authorities that sponsor CPC courses or programs, and CPC providers registered with the National Council of Examiners for Engineering and Surveying are approved providers and are exempt from the requirement of submitting an application to the Board and obtaining a CPC provider number.

1. For the purpose of this section, a school, university, or college shall be deemed accredited if it is:

i. Accredited by the New Jersey Department of Education;

ii. Approved by the New Jersey Commission on Higher Education; or

iii. Approved by an agency of another state with requirements substantially similar to the requirements of the New Jersey Department of Education or New Jersey Commission on Higher Education.

13:40-13.6 Compliance with CPC credits; audit

(a) Each licensee shall be subject to audit by the Board and is responsible for maintaining records to be used to support CPC credits claimed. Records required include, but are not limited to:

1. A log showing the type of activity claimed, sponsoring organization, attendance date, location, duration, instructor or speaker's name, and the number of CPC credits claimed;
2. Attendance verification records in the form of completion certificates or other documents supporting evidence of attendance; and
3. All documentation related to the educational program, including, but not limited to, course descriptions, printed program materials, and notes.

(b) A licensee shall maintain records for a period of five years after completion of the CPC course or equivalent educational program and shall submit such documentation to the Board upon request.

[page=1905] 13:40-13.7 Credit calculation

(a) CPC credits will be granted for each biennial renewal period as follows:

1. For educational programs:

i. Successful completion of approved educational program courses: 15 CPC credits for each semester-hour credit awarded by the college or university, or 10 CPC credits for each quarter-hour credit awarded by the college or university;

2. For equivalent educational programs:

i. Meetings of members and subgroups of professional engineering associations and other appropriate professional and technical associations when an engineering topic is presented as a principal part of the program: one CPC credit for each hour of instruction;

ii. Research and preparation of examinations, papers or publications: one CPC credit for each hour of research or preparation, not to exceed six CPC credits per biennial renewal period;

iii. Presentation of technical presentations, management, leadership or ethics courses, or exhibits: one CPC credit for each hour of preparation or presentation, not to exceed six CPC credits per biennial renewal period;

iv. Management, leadership or ethics courses: one CPC credit for each hour of instruction;

v. Correspondence or distance learning courses on engineering topics where a final examination is required: one CPC credit for each hour of instruction;

vi. Teaching or instruction of a course for the first time or teaching a course previously taught if substantial time was spent updating material: one CPC credit for each hour of preparation or instruction, not to exceed six CPC credits per biennial renewal period;

vii. Employer sponsored in-house courses: one CPC credit for each hour of instruction; and

viii. Workshops and seminars at professional meetings and conferences: one CPC credit for each hour of instruction; and

3. For courses taken at schools, universities, and colleges that are not part of an ABET accredited program: 15 CPC credits for each semester-hour credit awarded by the college or university, or 10 CPC credits for each quarter-hour credit awarded by the college or university.

13:40-13.8 Waiver of CPC requirements

(a) The Board may waive all or part of the CPC requirements on an individual basis for reasons of hardship, such as illness or disability, retirement of licensee, service in the armed forces of the United States of America, or other good cause.

(b) Any licensee seeking a waiver of all or part of the CPC requirements shall apply to the Board in writing at least 90 days prior to the commencement of the next biennial renewal period and set forth with specificity the reasons for requesting the waiver. The licensee shall also provide such additional information as the Board may reasonably request in support of the waiver request.

(c) A licensee shall not be required to obtain CPC credits during the biennial renewal period in which the licensee obtained initial licensure.

(d) A new licensee by way of comity shall be responsible at the first biennial renewal for one CPC credit for each full calendar month since the New Jersey license was issued.

(e) A licensee serving on active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in a calendar year shall have all CPC requirements waived for that year.

13:40-13.9 Responsibilities of program providers

(a) Program providers shall:

1. Select and assign qualified instructors for the program;
2. Assure that the number of participants and the physical facilities are consistent with the teaching methods to be utilized;
3. Disclose in advance to prospective participants, the course objectives, prerequisites, experience level, content, required advanced preparation, teaching method, and the number of CPC credits that may be approved in the program;
4. Solicit evaluations from both the participants and the instructor at the conclusion of each program;
5. Evaluate the performance of the instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors and advise instructors of their performance;
6. Systematically review the evaluation process to ensure its effectiveness;
7. Furnish to each enrollee who has successfully completed the program a verification of completion, which shall include at least the following information:

- i. The title, date, and location of the course offering;
 - ii. The name and license number of the attendee;
 - iii. The number of credits that may be awarded; and
 - iv. The name and signature of an authorized representative of the provider;
8. Maintain and retain accurate records of program attendance and completion for a six-year period;
9. Retain a written outline of course materials for a six-year period; and
10. Provide the Board with such documentation as requested by the Board.