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Sequence Number: 07-14-18
 Rule ID(s): 7208
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 Effective Date: 10/23/18

Proposed Rule(s) FILING FORM

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission: Tennessee Board of Architectural and Engineering Examiners
Division: Division of Regulatory Boards, Department of Commerce and Insurance
Contact Person: Elizabeth Goldstein
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0120-02	Rules of Professional Conduct
Rule Number	Rule Title
0120-02-.08	Seals

Rules of Tennessee Board of Architectural and Engineering Examiners
Chapter 0120-02
Rules of Professional Conduct

Rule 0120-02-.08 Seals is amended by adding language to paragraphs (2) and (4) so that as amended the rule shall read:

- (1) The design of the registrant's seal required by T.C.A. § 62-2-306, shall be as follows:
- (a) Engineer:



- (b) Architect:



- (c) Landscape Architect:



- (2) The registrant shall stamp with the registrant's seal the following documents:
- (a) All original sheets of any bound or unbound set of working drawings or plans; original sheets shall include tracings or other reproducible sheets;
 - (b) The original cover or index page(s) identifying all specification pages covered; and
 - (c) The original cover or index page(s) for design calculations or reports that are submitted for review.
 - (d) When an engineer must seal, sign and date engineering specifications, drawings, plans, or calculations for digitally generated seals and signatures under the provisions of T.C.A. § 62-2-306 (b), an index sheet for engineering specifications and calculations may be used. The index sheet must be signed, sealed and dated by those professional engineers in responsible charge of the production and preparation of each section of the engineering specifications or calculations, with sufficient information on each index sheet to identify every portion of the specifications or calculations for which each professional engineer is responsible. In addition, the index sheet shall include at a minimum:
 - 1. The name and license number of each engineer in responsible charge of the production of any portion of the calculations or specifications; and
 - 2. Identification of the project.
- (3) The registrant shall superimpose his signature (not a rubber stamp) and date of signature across the face and beyond the circumference of the seal on documents listed above.
- (4) When multiple registrants contribute to a project, each registrant shall sign and seal the portions of the project for which that registered consultant is responsible. When multiple registrants in responsible charge provide content on the same document, all such registrants should seal the document, and, if there is any question, a description of the areas of responsibility should be included. All registrants in responsible charge who work on a set of specifications are required to seal either the cover page, except as specified in 2(d) above, of the specifications, drawings, or plans or the cover page(s) for the section(s) of the specifications they produce.
- (5) (a) No registrant shall affix his or her seal or signature to sketches, working drawings, specifications or other documents developed by others not under the registrant's responsible charge and not subject to the authority of that registrant in critical professional judgments.
- (b) In circumstances where a registrant can no longer provide services on a project (such as death, retirement, disability, contract termination, etc.), a successor registrant may perform work on a set of plans originally prepared by another registrant. If the plans are incomplete (are at a stage prior to submittal to a reviewing official), the successor registrant may not seal the set of drawings prepared by the original registrant; rather, the successor registrant must take all steps necessary to ensure that the drawings were prepared under his or her responsible charge before sealing them. If the plans are complete and have been submitted to a reviewing official, the successor registrant may prepare and seal addenda sheets or document and seal changes to the original sheets if revisions are necessary.
- (6) (a) Responsible Charge. Plans, specifications, drawings, reports or other documents will be deemed to have been prepared under the responsible charge of a registrant only when:

1. The client requesting preparation of such plans, specifications, drawings, reports or other documents makes the request directly to the registrant, or to the registrant's employee at the time initial client contact is made, so long as the registrant has the right to control and direct the employee in the material details of how the work is to be performed;
 2. The registrant supervises and is involved in the preparation of the plans, specifications, drawings, reports or other documents and has input into and full knowledge of their preparation prior to their completion;
 3. The registrant reviews the final plans, specifications, drawings, reports or other documents;
 4. The registrant has the authority to, and does, make any necessary and appropriate changes to the final plans, specifications, drawings, reports or other documents; and
 5. Contributions of information or predrawn detail items or detail units that are incidental to and intended to be integrated into a registrant's technical submissions are from trusted sources (including, but not limited to, manufacturers, installers, consultants, owners, or contractors), are subject to appropriate review, and are then coordinated and integrated into the design by the registrant.
- (b) Except as provided by Rule 0120-02-.08(5)(b), any changes made to the final plans, specifications, drawings, reports or other documents after final revision and sealing by the registrant are prohibited by any person other than the registrant, including but not limited to owners/clients, contractors, subcontractors, other design professionals, or any of their agents, employees or assigns.
 - (c) Mere review of work prepared by another person, even if that person is the registrant's employee, does not constitute responsible charge unless the registrant has met the criteria set out above.
 - (d) The intent of the definition of responsible charge may be met if all provisions of the definition are met using remote electronic or other communication means.
- (7) No registrant shall affix his seal or signature to documents having titles or identities excluding the registrant's name unless:
- (a) Such documents were indeed developed by the registrant or under the registrant's responsible charge; and
 - (b) The registrant has exercised full authority to determine their development.
- (8) (a) Subject to the requirements of this rule, rubber-stamp, embossed, transparent self-adhesive or electronically generated seals may be used. Such stamps or seals shall not include the registrant's signature or date of signature.
- (b) Subject to the requirements of this rule, the registrant may affix an electronically generated signature and date of signature to documents. When used, electronic signatures and dates of signature shall be placed either across the face and beyond the circumference of the seal or adjacent to the seal. Documents that are signed using a digital signature must have an electronic authentication process attached to or logically associated with the electronic document. The digital signature must be:

1. Unique to the individual using it;
 2. Capable of verification;
 3. Under the sole control of the individual using it; and
 4. Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.
- (9) All working or partially completed plans, or any drawings that are not construction documents, shall be designated "preliminary – not for construction," "for review only," "draft," or other designation clearly indicating that the drawings are not complete.

Authority: T.C.A. §§ 62-2-203(c), 62-2-306, 62-2-306(d), and 62-2-307(f).

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Susan K. Ballard, RID				X	
Frank W. Wagster, RA	X				
Ricky Bursi, PE	X				
Robert Campbell, Jr. PE	X				
R. Blair Parker, RLA	X				
Richard D. Thompson, RA	X				
Brian Tibbs, RA	X				
Kathryn S. Ware, PE	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board on December 7, 2017 and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: June 19, 2018

Signature: 

Name of Officer: Elizabeth Goldstein

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: June 19, 2018

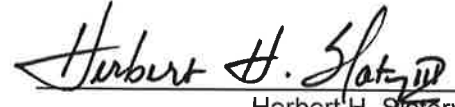
Notary Public Signature: 

My commission expires on: May 6, 2019

Agency/Board/Commission: Rules of the Tennessee Board of Architectural and Engineering Examiners

Rule Chapter Number(s): 0120-02

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


Herbert H. Slatery III
Attorney General and Reporter
7/17/2018
Date

Department of State Use Only

Filed with the Department of State on:

7/25/18

Effective on:

10/23/18



Tre Hargett
Secretary of State

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SECRETARY OF STATE
OFFICE OF REGULATIONS

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

The amendments to Rule 0120-02-.08 would affect small businesses which employ practicing engineers, architects, or landscape architects as these small businesses all are required to follow the Seals requirements of the board. Currently, there are around 1,800 registered Architecture firms, around 4,100 registered Engineering firms, and around 200 registered Landscape Architecture Firms; the majority of these would be considered a small business in Tennessee and thus would benefit from these rule amendments.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

There is no projected reporting, recordkeeping, or other administrative cost associated with the amendments to Rule 0120-02-.08.

(3) A statement of the probable effect on impacted small businesses and consumers.

The probable effect on impacted small businesses and consumers for the amendment to Rule 0120-02-.08 is ease of communication, faster sealing process, and better business procedures. The sealing amendments will help small businesses comply with the sealing requirements for larger projects that are worked on by several engineers.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

The Board believes that these changes are not burdensome, intrusive or costly and – as such – there do not appear to be any alternatives that would reasonably be expected to be less burdensome.

(5) A comparison of the proposed rule with any federal or state counterparts.

These rules do not have any federal or state counterparts.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption from these rules would not be expected to be beneficial for small businesses, as uniformity among the profession is important to maintain consistency and quality of the work performed by licensed engineers, architects, and landscape architects. All expected effects would be positive for small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rule changes are not expected to impact local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The amendments to Rule 0120-02-.08 allow an index sheet to be used for digitally generated sealing requirements that fall under T.C.A. § 62-2-306(b). The amendment to the rule specifies index sheet requirements for registrants to be in compliance with the seal rules of the Board. The amendment will allow for quicker signing and sealing for registered architects, engineers, and landscape architects, which will save time in reviewing plans. This amendment will be an industry-wide solution to a growing issue due to the expanding nature of electronic pdf files of plans being transferred from business to business.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

There is no known state or federal law mandating the promulgation of these rules.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Amendments to Rule 0120-02-.08 will directly affect any engineer, architect, or landscape architect when utilizing index sheets under the provisions of T.C.A. § 62-2-306(b) in conjunction with digitally generated seals and signatures. The Board and the Tennessee Department of Transportation urge adoption of this rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

There are no known opinions of the Attorney General and Reporter or any judicial ruling that directly relates to these rules.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

This rule is not estimated to have a probable increase or decrease in state and local government revenue and expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

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Elizabeth Goldstein, Assistant General Counsel
500 James Robertson Parkway
Davy Crockett Tower, 5th Floor
Nashville, TN 37243
(615) 741-3072

Elizabeth.Goldstein@tn.gov

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Roxana Gumucio, Interim Executive Director
Elizabeth Goldstein, Assistant General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

There is no known additional relevant information.

Rules of Tennessee Board of Architectural and Engineering Examiners
Chapter 0120-02
Rules of Professional Conduct

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- (b) Except as provided by Rule 0120-02-.08(5)(b), any changes made to the final plans, specifications, drawings, reports or other documents after final revision and sealing by the registrant are prohibited by any person other than the registrant, including but not limited to owners/clients, contractors, subcontractors, other design professionals, or any of their agents, employees or assigns.
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- (9) All working or partially completed plans, or any drawings that are not construction documents, shall be designated "preliminary – not for construction," "for review only," "draft," or other designation clearly indicating that the drawings are not complete.

Authority: T.C.A. §§ 62-2-203(c), 62-2-306, 62-2-306(d), and 62-2-307(f).