

Comments of the Independent Regulatory Review Commission



State Registration Board for Professional Engineers, Land Surveyors and Geologists Regulation #16A-4712 (IRRC #3264)

Digital Signature and Seal

October 21, 2020

We submit for your consideration the following comments on the proposed rulemaking published in the August 22, 2020 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board) to respond to all comments received from us or any other source.

1. Clarity and lack of ambiguity.

In response to Regulatory Analysis Form (RAF) Question #7, the Board states that one purpose of the proposed regulation is “to update its current regulation on seals to make them as consistent as possible with the other design professional boards in Pennsylvania, which are the State Architects Licensure Board and the State Board of Landscape Architects.” Additionally, the Board responds to RAF Question #10 that “[p]roviding consistency regarding all seals will help eliminate confusion among clients in the public and private sector and those members of the public who may view documents prepared by design professionals.” Insomuch that the Board, the State Architects Licensure Board (regulation #16A-4111: Digital Signature and Seal) and the State Board of Landscape Architects (regulation #16A-6112: Digital Signature and Seal) each have nearly identical regulations addressing digital signature and seal, we ask the Board to work with the State Architects Licensure Board and the State Board of Landscape Architects to ensure that the final-form regulations of each are consistent and clear for the regulated community.

2. Section 37.56a. Definitions. – Clarity.

"Digital seal"

The Board proposes to define "digital seal" as “[a]n electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted **by a person with the intent to seal** the document.” [Emphasis added.] The Board should revise this definition by deleting “person” and inserting “licensee” or “registrant.” This same comment applies to the use of “person” in the definition of “digital signature.”

Further, the definition of “digital seal” provides for an “electronic sound, symbol or process” to seal a document. How would a digital seal in the form of a sound or process meet the requirements of Section 37.58 (relating to seal)?

“Sole control”

Should this definition also include “signature” since the term is used in Sections 37.60(a) and (b) (relating to digital signature and seal) that pertain to both signatures and seals?

“Verification”

Should this definition also include “seal” since the term is used in Sections 37.60(a) and (b) (relating to digital signature and seal) that pertain to both signatures and seals?

3. Section 937.59. Use of seal. – Clarity; Implementation procedures.

Paragraph (2) is being amended to allow the use of digital seals to appear on all subsequent pages of plans. Is the Board’s intent to require that a digital seal appear on all pages of final or complete documents that are digitally sealed, or can a licensee use a traditional seal on the first page and use either a digital or facsimile seal on all subsequent pages of the plans or plats? The Board should clarify its intent in the Preamble to the final-form rulemaking and amend the regulatory language in the Annex, if necessary.

4. Section 15.33a. Digital signature and seal. – Clarity and lack of ambiguity.

National Council of Examiners in Engineering and Surveying Model Rule 240.20(H) (relating to seals) contains the following sentence: “A digital signature that uses a process approved by the board will be presumed to meet the criteria set forth in Section H above.” This sentence is not included in the proposed regulation. Why did the Board omit this provision? For clarity, the Board should consider adding a requirement relating to the processes required under subsections (a) and (b).

Subsection (c) sets forth the technical standards of a hard copy printed from an electronic document. In reference to alterations to an electronic file, why is a digital seal not included? We ask the Board to add digital seals to the alteration provisions in this subsection.

5. RAF – Clarity.

In response to RAF Questions #15, #16 and #19, the Board provides inconsistent numbers when identifying the various licensees. We ask the Board to update and correct the numbers provided in the final-form RAF.

6. Miscellaneous clarity.

The Preamble to the proposed regulation cites the Digital Signature and Electronic Authentication Law, a bill introduced in the United States Congress that was not enacted. As this is not an enacted law, the citation should either be deleted in the Preamble to the final-form regulation or replaced with any successor legislation.