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- Amendment
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Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only ONE Rule Number/RuleTitle per row)

Chapter Number	Chapter Title
0780-02-13	Modular Building Units
Rule Number	Rule Title
0780-02-13-.01	Definitions
0780-02-13-.02	Standards
0780-02-13-.03	Licenses
0780-02-13-.04	Approval of Design Review Agencies
0780-02-13-.06	Approval of Construction Inspection Agencies
0780-02-13-.07	Responsibilities of Approved Construction Inspection Agencies
0780-02-13-.09	Building Systems and Compliance Assurance Programs
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0780-02-13-.16	Department Functions
0780-02-13-.17	Disciplinary Proceedings

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Rule 0780-02-13-.01 Definitions is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) For purposes of this chapter, unless the context otherwise requires, the definitions of terms contained in Tenn. Code Ann. §68-36-303 are applicable. In addition:
 - (a) "Approved construction inspection agency" means an approved inspection agency which is responsible for performing the functions described in rule 0780-2-13-.07.
 - (b) "Approved design review agency" means an approved inspection agency which is responsible for performing the functions described in rule 0780-2-13-.05.
 - (c) "Building system" means model plans, specifications, and documentation for a system or type of modular building unit, or for the foundation, structural, electrical, mechanical, plumbing, gas, fire protection, or other system(s) thereof affecting health and safety.
 - (d) "Closed construction" means any modular building unit, component, assembly, or system manufactured in such a manner that all concealed parts or processes of manufacturing cannot be inspected before installation at the site without disassembly, damage, or destruction.
 - (e) "Commissioner" means the commissioner of commerce and insurance.
 - (f) "Compliance assurance program" means the system, documentation, and methods of assuring that modular building units and their components, including the manufacturing, storage, transportation, assembly, handling, and installation thereof, conform to the standards.
 - (g) "Component" means any assembly, sub-assembly, or combination of elements for use as a part of a modular building unit, which may include the structural, electrical, mechanical, plumbing, fire protection, or other system(s) thereof affecting life safety, but does not mean panelized construction.
 - (h) "Damage" means any impairment, adulteration, or breakage occurring to a modular building unit, or any part thereof, that causes it not to comply with the standards.
 - (i) "Dealer" means any person engaged in the sale, brokerage or distribution, by consignment or otherwise, of modular building units or components to persons who in good faith purchase such units or components for purposes other than resale.
 - (j) "Department" means the department of commerce and insurance.
 - (k) "Installer" means any person engaged in the assembly of modular building units on-site or the process or affixing components to land, a foundation, footings, utilities, or an existing building.
 - (l) "Label" means an insignia approved by the Department for certifying compliance with the standards.
 - (m) "Manufacturer" means any person engaged in the process of making, fabricating, constructing, forming, assembling, or reassembling modular building units or components from raw, unfinished, semi-finished, or finished materials.
 - (n) "Model" means a specific design of modular building unit which is based upon size, room arrangement, method of construction, location, arrangement or size of plumbing, mechanical, or electrical equipment and systems therein in accordance with plans and specifications submitted to an approved design review agency.

- (o) "Open construction" means any modular building unit, component, assembly, or system manufactured in such a manner that all portions can be readily inspected at the site without disassembly, damage, or destruction.
- (p) "Person" means any individual, firm, association, partnership, or corporation.
- (q) "Site" means the location on which a modular building unit is installed or is to be installed.
- (r) "Standards" means the standards for the construction and installation of modular building units established by rule 0780-2-13-.02.
- (s) "Standard design" means any modular building unit, component, model or series intended for duplication or repetitive manufacture.
- (t) "System prototype" means a specific design or modular building unit designated by the manufacturer to be the standard for imitation reproduction. A system prototype may include options that do not affect the performance function of any system.

Authority: T.C.A. §§ 68-102-113, 68-126-302, 68-126-303 and 68-126-305.

Rule 0780-02-13-.02 Standards is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Unless otherwise provided by applicable law or the provisions of this chapter, the standards for the construction and installation of modular building units in the State of Tennessee shall be those prescribed in:
 - (a) The National Electrical Code, 2008 edition, published by the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts, 02269-9109, except for: in Article 210.12(B), arc-fault circuit interrupters, combination type, shall be required for all bedrooms and in all other rooms shall be optional and there shall be a maximum of no more than ten (10) outlets on a fifteen (15) ampere circuit or no more than twelve (12) outlets on a twenty (20) ampere circuit; in Article 334.15(C), Nonmetallic-Sheathed Cable shall not be required to be run through bored holes in unfinished basements and crawl spaces with less than four (4') feet and six (6") inches of clearance; and in Article 406.8(B), the installation of listed weather-resistant type receptacles shall be optional;
 - (b) The International Building Code, 2006 edition, published by the International Code Council, Incorporated (ICC), Birmingham Regional Office, 900 Montclair Road, Birmingham, Alabama 35213-1206, except for Chapter 11 pertaining to accessibility and Chapter 27 pertaining to electrical requirements;
 - (c) The International Fire Code, 2006 edition, published by the International Code Council, Inc., 500 New Jersey Avenue Northwest, 6th Floor, Washington, D.C. 20001.
 - (d) For state buildings, educational occupancies and any other occupancy requiring an inspection by the state fire marshal for initial licensure as defined by the 2006 edition of the International Building Code, the Life Safety Code (NFPA No. 101-2006), 2006 edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101.
 - (e) The International Mechanical Code, 2006 edition, published by the ICC;
 - (f) The International Fuel Gas Code, 2006 edition, published by the ICC;
 - (g) The International Plumbing Code, 2006 edition, published by the ICC;
 - (h) The International Energy Conservation Code, 2006 edition, published by the ICC;
 - (i) The Tennessee Public Buildings Accessibility Act, Tenn. Code Ann., Title 68, Chapter 120, Part 2 (Tenn. Code Ann. §68-120-201, et seq.), where applicable; and

- (j) Safety Glazing Materials, Tenn. Code Ann., Title 68, Chapter 120, Part 3 (Tenn. Code Ann. §68-120-301 et seq.), where applicable.
- (2) In the event of a conflict or inconsistency among the codes herein adopted by reference, the more stringent code provision shall prevail.
- (3) In lieu of the codes listed in subparagraphs (1)(b) through (1)(e) and (1)(i) above, the 2006 edition of the International Residential Code for One and Two Family Dwellings, published by the ICC, may be used for any "dwelling" (as defined therein) covered by such code.
- (4) This rule shall not be construed as adopting any provision of the cited publications which establishes:
 - (a) An optional or recommended, rather than mandatory, standard or practice, or
 - (b) Any agency, procedure, fees, or penalties for administration or enforcement purposes.
- (5) In order to provide for a transition period for the application of newly adopted codes, for a period of 60 days after the effective date of a code change, a manufacturer may begin construction of modular units based on previously approved plans for the codes that were in effect on the day immediately prior to effective date of the newly adopted codes.

Authority: T.C.A. §§68-102-113 and 68-126-305.

Rule 0780-02-13-.03 Licenses is amended by deleting the text of the rule in its entirety and substituting it with the following language, so that, as amended, the rule shall read:

- (1) (a) No person shall engage in business as a manufacturer of modular building units for sale or installation in the State of Tennessee without first having obtained a manufacturer's license from the Department.
- (b) No person shall engage in business as a dealer of modular building units in the State of Tennessee without first having obtained a dealer's license from the Department.
- (c) No person shall engage in business as an installer of modular building units in the State of Tennessee without first having obtained an installer's license from the Department.
- (2) A separate license shall be required for each manufacturing facility operated by a manufacturer, or place of business operated by a dealer or installer under this chapter.
- (3) An application for a license required hereunder shall be submitted on the form prescribed by the Department, and accompanied by a non-refundable application fee as follows:

Manufacturer	\$150.00
Dealer	\$150.00
Installer	\$150.00
- (4) The application shall be submitted on a form prescribed by the Department and include the following information:
 - (a) Name and address of the applicant;
 - (b) Ownership and management of the applicant's business;
 - (c) The applicant's experience in modular building unit manufacturing, sales, or installation;
 - (d) Any manufacturer's, dealer's or installer's licenses held by the applicant in this or another state;
 - (e) Any disciplinary action affecting any such licenses; and

- (f) Any other information necessary to effectively administer the program.
- (5) The Department shall be notified in writing of any change in the information furnished in an application within thirty (30) days of such change.
- (6) The Department shall issue a license to qualified applicants upon receipt of the appropriate license fee as follows:

Manufacturer	\$1000.00
Dealer	\$500.00
Installer	\$250.00

- (7) Any manufacturer, dealer or installer who commences business in this state prior to obtaining a license shall be required to pay one-half (1/2) of the license fee, in addition to the fees established in paragraphs three (3) and six (6) of this rule, for issuance of an original license.
- (8) All licenses issued hereunder shall expire on June 30 of each year and are invalid from that date onward unless renewed.
- (9) An application for renewal of a license shall be submitted on the form prescribed by the Department, and accompanied by the appropriate renewal fee as follows:

Manufacturer	\$ 500.00
Dealer	\$ 250.00
Installer	\$ 150.00

- (10) Any manufacturer, dealer or installer who fails to renew such manufacturer's, dealer's or installer's license on or before its expiration date, June 30, and until August 31 shall be required to pay one-half (1/2) of the license fee, in addition to the fee established in paragraph (9) of this rule.
- (11) Any manufacturer, dealer or installer who has failed to renew his or her manufacturer's, dealer's or installer's license as of September 1 of each year shall be required to apply for a new license as prescribed in paragraphs three (3) through (6) of this rule.
- (12) Any change of ownership shall require a new license.
- (13) Any applicant for a new or renewal of a license as a manufacturer, dealer or installer of modular building units shall submit a surety bond executed by the applicant (as principal) and by a surety company qualified to do business in this state (as surety).

- (a) Each bond shall be for the benefit of any person who suffers loss or damage resulting from code-related non-compliance with the Tennessee Modular Building Act or the rules duly promulgated thereunder by such manufacturer, dealer or installer.

- (b) The bond shall be in the following amounts:

Manufacturer	one hundred thousand dollars (\$100,000.00)
Dealer	fifty thousand dollars (\$500,000.00)
Installer	twenty-five thousand dollars (\$25,000.00)

- (c) Each bond shall cover code-related non-compliances occurring during the license period. A new bond or proper continuation certificate shall be submitted with each application for license renewal. The aggregate liability of the surety for code-related non-compliances occurring in each license year shall in no event exceed the amount of the bond for that year.

- (d) A separate bond shall be required for each place of business operated by a manufacturer, dealer or installer.

- (14) An application for a new or renewal of a license will not be considered complete until all required information, the bond and fees have been submitted.

Authority: T.C.A. §§ 68-102-113 and 68-126-305.

Rule 0780-02-13-.04 Approval of Design Review Agencies is amended by adding the following text at the end of the existing language as paragraphs (7), (8) and (9), so that the new paragraphs shall read:

- (7) Any design review agency who fails to renew such design review agency's approval on or before its expiration date, June 30, and until August 31 shall be required to pay one-half (1/2) of the approval fee, in addition to the fee established in paragraph (6) of this rule.
- (8) Any design review agency who has failed to renew such design review agency's approval as of September 1 of each year shall be required to apply for a new approval as prescribed in paragraph two (2) of this rule.
- (9) Any change of ownership shall require a new approval.

Authority: T.C.A. §§ 68-102-113, 68-126-302, and 68-126-305.

Rule 0780-02-13-.06 Approval of Construction Inspection Agencies is amended by adding the following text at the end of the existing language as paragraphs (7), (8) and (9), so that the new paragraphs shall read:

- (7) Any construction inspection agency who fails to renew such construction inspection agency's approval on or before its expiration date, June 30, and until August 31 shall be required to pay one-half (1/2) of the approval fee, in addition to the fee established in paragraph (6) of this rule.
- (8) Any construction inspection agency who has failed to renew such construction inspection agency's approval as of September 1 of each year shall be required to apply for a new approval as prescribed in paragraph two (2) of this rule.
- (9) Any change of ownership shall require a new approval.

Authority: T.C.A. §§ 68-102-113, 68-126-302, and 68-126-305.

Subparagraph (d) of paragraph (1) of rule 0780-02-13-.07 Responsibilities of Approved Construction Inspection Agencies is amended by deleting the text of the subparagraph in its entirety and substituting it with the following language, so that, as amended, the subparagraph shall read:

- (d) Preparing all reports which the Department may reasonably require in carrying out its responsibilities under this Chapter, including monthly inspection reports and monthly production reports (Form A). These reports may be required to be submitted electronically.

Authority: T.C.A. §§ 68-102-113, 68-126-302 and 68-126-305.

Paragraph (3) of rule 0780-02-13-.07 Responsibilities of Approved Construction Inspection Agencies is amended by deleting the text of the paragraph in its entirety and substituting it with the following language, so that, as amended, the paragraph shall read:

- (3) Plant Certification Report. If, on the basis of the initial plant certification inspection, the approved construction inspection agency determines that the manufacturer is in compliance with its approved building system, compliance assurance program, and the standards, the agency shall prepare and forward to the Department a certification report within thirty (30) days of the completion of the initial plant certification inspection. The certification report shall include:

- (a) The name and address of the manufacturing facility;
- (b) The name of the approved design review agency which approved the manufacturer's building system and compliance assurance program, and the dates of approval;
- (c) The names and titles of the inspection agency personnel performing the initial plant certification inspection;
- (d) The serial numbers of the modular building units or components inspected;
- (e) A full report of all inspections conducted, nonconformities observed and corrective actions taken;
- (f) The date of certification; and
- (g) The Tennessee modular label number(s) assigned to the unit.

Authority: T.C.A. §§ 68-102-113, 68-126-302 and 68-126-305.

Subparagraph (d) of paragraph (4) of rule 0780-02-13-.07 Responsibilities of Approved Construction Inspection Agencies is amended by deleting the text of the subparagraph in its entirety and substituting it with the following language, so that, as amended, the subparagraph shall read:

- (d) Nothing in this paragraph shall preclude an approved construction inspection agency from conducting inspections at a greater frequency than the minimum prescribed herein if, in the agency's or Department's professional judgment, such action is necessary to discharge its responsibilities properly. In determining the appropriate frequency of inspection for any manufacturer, an approved construction inspection agency should consider such factors as:
 - 1. the production volume of the factory;
 - 2. the complexity of the design;
 - 3. the qualifications of the manufacturer's quality control personnel; and
 - 4. the experience record of the manufacturer; and
 - 5. the failure to follow compliance assurance procedures.

Authority: T.C.A. §§ 68-102-113, 68-126-302 and 68-126-305.

Paragraph (1) of rule 0780-02-13-.09 Building Systems and Compliance Assurance Programs is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

- (1) Approval Required.
 - (a) No modular building unit or component shall be manufactured for sale or installation in this state until the building system and compliance assurance program therefor have been approved by an approved design review agency and filed with the Department.
 - (b) Separate approval of a building system and compliance assurance program must be obtained for each manufacturing facility at which the manufacturer intends to produce modular building units or components.

- (c) The manufacturer shall submit three (3) copies of or an electronic copy, in a form acceptable to the Department, of the proposed building system and compliance assurance program documentation to an approved design review agency in the manner prescribed in this rule.

Authority: T.C.A. §§68-102-113 and 68-126-305.

Paragraph (2) of rule 0780-02-13-.09 Building Systems and Compliance Assurance Programs is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

(2) Submission of Building Systems.

(a) General Requirements.

1. A model building system shall bear the name, address, phone number, fax number, signature, date and seal of the responsible architect and/or engineer, duly registered in the State of Tennessee, certifying that the model building system complies with applicable standards. The model building system must be sealed in accordance with the statutes and rules concerning the practice of architecture and engineering in Tennessee.
2. All documents submitted shall indicate the manufacturer's name, office address, e-mail address, telephone number, fax number and the address of the manufacturing facility. Where a manufacturer operates more than one facility, each facility shall be assigned a sequential plant number and all documentation shall include the appropriate plant number.
3. The manufacturer shall submit plans showing all elements relating to specific systems on properly identifiable separate sheets. All sheets shall contain the plan number (identified as "plan number") assigned by the architect or engineer and a blank rectangular space near the title box for the approved design review agency's stamp of approval. The above mentioned plan number shall identify the manufacturer by using the initials of the manufacturer's company name and sequential numbering for each submittal. All Compliance Assurance (CA) Manual revisions will be assigned a sequential revision number.
4. All work to be performed on-site, including location and connection of all equipment, appliances and systems, including fire protection sprinkler systems and commercial hood and duct systems, shall be identified and distinguished from work to be performed in the manufacturing facility.
5. The nature, grade, and quality of all materials shall be specified.
6. Design drawings, details, calculations and test reports shall be submitted when required or requested by the Department. These items may be required to be submitted electronically.
7. Design drawings and details shall be drawn to scale, dated, and identified. The number of sheets in each set shall be indicated in an index on the cover sheet.
8. Floor plans shall indicate the location of the Tennessee modular label(s) and manufacturer's data plate.
9. Floor plans shall also identify the use of all rooms and spaces by name and/or number.
10. A properly completed submittal form and fee (Rule 0780-2-13-.09 (4) (b)) shall be submitted for each compliance assurance manual, building system manual, model, plan, design specification or revision.

(b) Required construction details for each set of model plans.

1. The building system for a modular building unit shall provide or show, but not be limited to, the following details, including the method of their testing or evaluating (or both);
 - (i) General.
 - (I) Details and methods of installation of modular building units or components on foundations and/or to each other.
 - (II) All exterior elevations.
 - (III) Cross sections as necessary to identify major building components.
 - (IV) Details of flashing, such as at openings and at penetrations through roofs and sub-component connections. Indicate flashing material and gauge to be used.
 - (V) Attic access and attic ventilation.
 - (VI) Exterior wall, roof and soffit material as well as finish.
 - (VII) Interior wall, floor and ceiling finish material.
 - (VIII) Tenant separation walls with UL or equivalent assembly details and all application instructions.
 - (IX) Sizes, locations and types of doors and windows, and a complete hardware schedule.
 - (X) Recommended foundation plans, vents, and under-floor access.
 - (XI) Insulation value for water, piping, air ducts, walls, attic flues, and ground flues (if above grade).
 - (XII) Information contained in the manufacturer's data plate.
 - (ii) Component Usage.
 - (I) Occupancy classification.
 - (II) Area, height and number of stories.
 - (III) Type of construction.
 - I. Construction Type.
 - II. Sprinklered or Unsprinklered.
 - (IV) Fire resistance ratings.
 - (V) Occupant load.
 - (iii) Space and Fire Safety.
 - (I) Detail of fire resistance rated assemblies, and all application instructions for all stairway enclosures, doors, including door frames, hardware and other accessories, walls, tenant separation walls, floors, ceilings, partitions, columns, roof, and shaft enclosures.

- (II) Details as to width of all aisles, exits, corridors, passageways, and stairway enclosures.
 - (III) Flame spread and smoke development classification of finished materials.
 - (IV) Fire stopping details, and all application instructions for penetrations of all rated construction.
 - (V) Location of all smoke detectors.
- (iv) Structural.
- (I) Engineer's calculations of structural members, framing, and foundation, where appropriate.
 - (II) Design soil bearing value.
 - (III) Structural and framing details of all floors, walls, and roof.
 - (IV) Details and stress diagrams of roof trusses.
 - (V) Details of reinforcing steel.
 - (VI) Complete loading schedule, including roof, handrail, guardrail, floor, wind, snow, and seismic loading.
 - (VII) Column loads and column schedule.
 - (VIII) Lintel schedule.
 - (IX) Size, spacing, and details of all structural elements.
 - (X) Grade or quality of all structural elements (lumber, steel, etc.).
 - (XI) Elevation of structural elements, walls, or sections thereof, providing resistance to vertical loads or lateral forces.
 - (XII) Complete details of all structural connections.
- (v) Mechanical.
- (I) Separate floor plan(s) with the location of all equipment and appliances. Indicate equipment and appliances listed or labeled by approved agencies.
 - (II) Heat gain and loss calculations.
 - (III) Manufacturer's name, make, model, number, BTU, input rating of all equipment and appliances, as appropriate, or the equivalent thereof.
 - (IV) Duct and register locations, sizes, and materials.
 - (V) Clearances from combustible material or surfaces for all ducts, flues, and chimneys.
 - (VI) Method of providing required combustion air and return air.
 - (VII) Location, size, and weight of flues, vents, and chimneys and clearances from air intakes and other vents and flues.
 - (VIII) Details regarding dampers in duct penetrating fire separations.

- (IX) Complete drawings of fire sprinkler system, standpipe system, and fire alarm system. Site water flow requirements are subject to the local authority having jurisdiction.
 - (X) Detail of elevator or escalator system, including method of emergency operation.
- (vi) Plumbing.
- (I) Separate floor plan(s) and/or schematic drawing(s) of the plumbing layout, including, but not limited to, size of piping, fittings, traps and vents, cleanouts and valves, of gas, water, waste and drainage system(s).
 - (II) Plumbing materials, and location of all equipment and appliances to be used. Indicate the fixture unit capacity of the system(s) and make, model, and rating/capacity of equipment and appliances. Indicate equipment and appliances listed or labeled by approved agencies.
 - (III) Make and model of safety controls (such as for water heaters), their location, and whether listed or labeled by approved agencies.
 - (IV) Method of supporting piping and intervals of support.
 - (V) (a) Location, size and height of vents above roofs and required clearances, including, but not limited to, clearances from air intakes, other vents, and flues.
 - (b) Location, size and access to automatic air admittance valves.
 - (VI) Location and methods of penetration of piping through load-bearing structural members.
 - (VII) Methods of testing.
- (vii) Electrical.
- (I) Separate floor plan(s) with single line diagram of the entire electrical installation.
 - (II) Load calculations for service and feeders.
 - (III) Sizes of all feeders and branch circuits.
 - (IV) Size, rating, and location of main disconnect/overcurrent protective devices.
 - (V) Method of interconnection between modular building units or components and location of connections.
 - (VI) Location of all outlets and junction boxes.
 - (VII) Method of mounting fixtures and wiring installations.

2. The requirements of this subparagraph (b) shall apply to building systems for components only to the extent deemed necessary by the approved design review agency or the Department to permit proper evaluations of such components.

Authority: T.C.A. §§68-102-113 and 68-126-305.

Subparagraph (b) of paragraph (4) of rule 0780-02-13-.09 Building Systems and Compliance Assurance Programs is amended by deleting the text of the subparagraph in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

- (b) The approved design review agency shall approve the manufacturer's building system and compliance assurance program when it determines that they meet these standards. Within thirty (30) days of approval, such agency shall forward to both the manufacturer and Department a complete copy of the approved building system and compliance assurance program documentation, which the Department may require to be submitted electronically. Each set of model plans, building system manual or compliance assurance manual submittal to the Department shall be accompanied by:
 - (i) a filing fee of one hundred fifty dollars (\$150.00); and
 - (ii) for those making payment by over the Internet, payment of an internet payment processing fee, not to exceed two and one half percent (2 1/2%), to be used solely to defray the costs of any payments processed electronically.

Authority: T.C.A. §§ 68-102-113 and 68-126-305.

Subparagraph (b) of paragraph (6) of Rule 0780-02-13-.09 Building Systems and Compliance Assurance Programs is amended by deleting the text of the subparagraph in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

- (b) All approved variations must be submitted to the Department and shall be made a part of the written record of the approval of the building system.

Authority: T.C.A. §§ 68-102-113 and 68-126-305.

Subparagraph (d) of paragraph (4) of rule 0780-02-13-.11 Labels is amended by deleting the text of the subparagraph in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

- (d) Requests for labels shall be submitted electronically. Label fees shall be submitted in a method acceptable to the Department, which may include cash, check, money order or electronically. The department may charge an internet payment processing fee, not to exceed two and one half percent (2 1/2%), to those making payment over the Internet to be used solely to defray the costs of any payments processed electronically.

Authority: T.C.A. §§ 68-102-113 and 68-126-305.

Subparagraph (a) of paragraph (1) of rule 0780-02-13-.16 Department Functions is amended by deleting the text of the subparagraph in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

- (1) Inspections and Monitoring.
 - (a) The Commissioner and the Commissioner's authorized representatives may, at reasonable hours and without advance notice:
 1. inspect any activities carried on by a manufacturer, dealer, installer, design review agency or construction inspection agency which are regulated under this chapter; and
 2. monitor the performance of any approved design review agency or construction inspection agency in order to determine whether it is properly discharging its responsibilities under this chapter.

Authority: T.C.A. §§ 68-102-113 and 68-126-305.

Subparagraph (b) of paragraph (2) of rule 0780-02-13-.16 Department Functions is amended by deleting the text of the subparagraph in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

- (b) The fee for field technical services by the Department shall be forty dollars (\$40.00) per man-hour, plus all necessary expenses in accordance with the comprehensive travel regulations as promulgated by the Department of Finance and Administration and approved by the Attorney General. The minimum time billed shall be four (4) hours.

Authority: T.C.A. §§ 68-102-113 and 68-126-305.

Rule 0780-02-13-.17 Disciplinary Proceedings is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) The Commissioner may refuse to issue or renew, or suspend or revoke, any license to act as a manufacturer, dealer, or installer, or any approval to act as a design review agency or construction inspection agency, on any of the following grounds:
 - (a) Obtaining or attempting to obtain such license or approval by fraud or misrepresentation;
 - (b) Violation of any provision of this Chapter or Tenn. Code Ann. Title 68, Chapter 126, Part 3;
 - (c) Willful or consistent failure to comply with the standards;
 - (d) Conviction in a court of competent jurisdiction of any crime relating to activities regulated by this chapter;
 - (e) Employment of fraudulent devices, methods, or practices in connection with activities regulated by this chapter;
 - (f) Offering for sale, either wholesale or retail, products of an unlicensed manufacturer;
 - (g) Offering for sale, either wholesale or retail, unlabeled modular building units or components;
 - (h) Having such license or approval refused, suspended, or revoked by another state;
 - (i) Any cause for which issuance of such license or approval could have been refused had it existed and been known to the Commissioner at the time of issuance; or
 - (j) Selling modular building units to an unlicensed dealer.
- (2) The Department will notify all licensed manufacturers of any suspension or revocation of approval of a design review or construction inspection agency. Such notice will contain instructions as to the disposition of modular building units or components previously labeled by the agency whose approval has been suspended or revoked.
- (3) A design review or construction inspection agency whose approval has been suspended or revoked shall, within thirty (30) days of such suspension or revocation, deliver to the custody of the Department:
 - (a) Copies of all records required to have been kept by the agency; and
 - (b) All labels in the possession, or under the control or responsibility, of the agency.

- (4) The Commissioner may, in a lawful proceeding respecting any individual or entity required to be licensed, or approved or who is otherwise subject to regulation by the Department, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a statute or rule by such individual/entity. The amount of any such civil penalty assessed shall be a minimum of one hundred dollars (\$100.00) and shall not exceed five thousand dollars (\$5000.00) for each day of violation or for each act of violation.
- (a) In determining the amount of a civil penalty the Commission may consider the following factors:
- (i) whether the amount imposed will be a substantial economic deterrent to the violator;
 - (ii) the circumstances leading to the violation;
 - (iii) the severity of the violation and the risk of harm to the public;
 - (iv) the economic benefits gained by the violator as a result of non-compliance; and
 - (v) the interest of the public.
- (b) For purposes of the assessment of civil penalties pursuant to this rule, each separate act shall constitute a separate violation and each day of continued violation shall constitute a separate violation.

Authority: T.C.A. §§ 68-102-113, and 68-126-305.

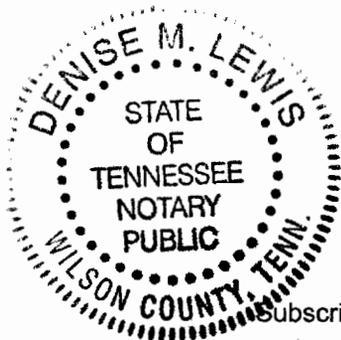
I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Commerce and Insurance on 04/20/09 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/23/08

Notice published in the Tennessee Administrative Register on: 01/15/09

Rulemaking Hearing(s) Conducted on: (add more dates). 02/25/09



Date: 4/20/09

Signature: Leslie Newman

Name of Officer: Leslie A. Newman

Title of Officer: Commissioner

Subscribed and sworn to before me on: 4/20/09

Notary Public Signature: Denise M. Lewis

My commission expires on: 3/5/12

Commission Expires MAR

All rulemaking hearing 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.

Robert E. Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter
6-10-09
Date

Department of State Use Only

Filed with the Department of State on: 6/15/09

Effective on: 8/29/09

Tre Hargett
Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

The Home Builders of Tennessee submitted oral testimony and written comments against increasing the bond requirement for a modular manufacturer from \$100,000 to \$500,000.

RESPONSE: The Department appreciates these comments and they have been taken into consideration. Based on these comments, similar comments and economic factors, the Department has decided that, while the current bond amount does not offer adequate consumer protection, raising the bond requirements may not be the best way to achieve increased consumer protection and, since this industry is a national industry, consideration of best practices in other states, including the use of insurance instead of bonding, should be considered to ensure that the least burdensome method to provide adequate consumer protection is adopted.

Mr. Bill Duemling of Par-Kut International, Inc., Mr. Guy Sextro of Pac-Van Inc. and Mr. Michael Wade of Cavalier Home Builders submitted written comments against increasing the bond requirement for a modular manufacturer from \$100,000 to \$500,000.

RESPONSE: The Department appreciates these comments and they have been taken into consideration. Based on these comments, similar comments and economic factors, the Department has decided that, while the current bond amount does not offer adequate consumer protection, raising the bond requirements may not be the best way to achieve increased consumer protection and, since this industry is a national industry, consideration of best practices in other states, including the use of insurance instead of bonding, should be considered to ensure that the least burdensome method to provide adequate consumer protection is adopted.

Mr. Bob Johnson of RADCO submitted oral comments where he recommended: the adoption of a transition period to give manufacturers time to update their plans after the new codes go into effect; not requiring each place of business of design review agencies and construction inspection agencies to be registered; and allow plans to be submitted without sprinkler drawings and specifications but state that the sprinkler drawings and specifications are to be done on site by a licensed professional.

RESPONSE: The Department appreciates these comments and they have been considered. The Department included a transition period in its recent update to its rules for the Codes Enforcement Section and thinks it would be a good idea here. The Department has reconsidered requiring each place of business of design review agencies and construction inspection agencies to be registered and is not adding that to the rules. Most design review agencies and construction inspection agencies have several offices throughout the country. The Department included this requirement in the original proposal to reduce the risk that the license of a design review agency or construction inspection agency could be put at risk by the actions of employees in one office which occurred recently. The Department has decided not to adopt Mr. Johnson's suggestion regarding the submission of plans without sprinkler drawings and specifications. The Department understands this requirement can increase the time it takes to draw the plans and specifications for the modular unit; however, there are very few modular buildings that require sprinklers. The Department believes that, in these few projects that require sprinklers, allowing the sprinkler drawings and specifications to be done on-site could result in sprinkler plans not being reviewed or the sprinklers not being installed.

Ms. Debbie Callahan Park of Specialized Structures submitted written comments: against increasing the bond requirement for a modular manufacturer from \$100,000 to \$500,000; against raising the filing fees; against adopting rules regarding civil penalties and in support of RADCO's suggestions that the Department adopt a transition period to give manufacturers time to update their plans after the new codes go into effect and allow plans to be submitted without sprinkler drawings and specifications but state that the sprinkler drawings and specifications are to be done on site by a licensed professional.

RESPONSE: The Department appreciates these comments and they have been taken into consideration. Based on these comments, similar comments and economic factors, the Department has decided that, while the current bond amount does not offer adequate consumer protection, raising the bond requirements may not be the best way to achieve increased consumer protection and, since this industry is a national industry, consideration of best practices in other states, including the use of insurance instead of bonding, should be considered to ensure that the least burdensome method to provide adequate consumer protection is adopted.

The Modular Building Program does not receive any state revenue dollars. Fees collected by the program pay for the administrative costs associated with the program. The filing fees were increased to \$100 in 2004 from the original fee of \$20 that was adopted in 1986. Based on further information received relative to implementation of the electronic submission program, the Department has reduced the filing fee increase to \$150, rather than \$200. This amount will cover some of the increased costs of the program since the last fee adoption and cover the anticipated recurring costs of implementation of the electronic submission program. The Department believes this amount is not unduly burdensome to the industry because utilizing the electronic submission process will result in savings in courier and overnight delivery services and printing costs that should more than offset the fee increase. The Department is adopting rules regarding civil penalties to provide the public with guidelines on how the Department will issue civil penalties as authorized by Tennessee Code Annotated § 68-126-305(b)(5) (Public Acts 2007, Chapter 232). The Department included a transition period in its recent update to its rules for the Codes Enforcement Section and thinks it would be a good idea here. The Department has decided not to adopt RADCO's suggestion regarding the submission of plans without sprinkler drawings and specifications. The Department understands this requirement can increase the time it takes to draw the plans and specifications for the modular unit; however, there are very few modular buildings that require sprinklers. The Department believes that, in these few projects that require sprinklers, allowing the sprinkler drawings and specifications to be done on-site could result in sprinkler plans not being reviewed or the sprinklers not being installed.

Ms. Josette Tabor from Vanguard Modular Building Systems submitted written comments: against increasing the bond requirement for a modular manufacturer from \$100,000 to \$500,000; against raising the filing fees; against adopting of the 2006 I-codes and the 2008 national electric code; against adopting rules regarding civil penalties.

RESPONSE: The Department appreciates these comments and they have been taken into consideration. Based on these comments, similar comments and economic factors, the Department has decided that, while the current bond amount does not offer adequate consumer protection, raising the bond requirements may not be the best way to achieve increased consumer protection and, since this industry is a national industry, consideration of best practices in other states, including the use of insurance instead of bonding, should be considered to ensure that the least burdensome method to provide adequate consumer protection is adopted. The Modular Building Program does not receive any state revenue dollars. Fees collected by the program pay for the administrative costs associated with the program. The filing fees were increased to \$100 in 2004 from the original fee of \$20 that was adopted in 1986. Based on further information received relative to implementation of the electronic submission program, the Department has reduced the filing fee increase to \$150, rather than \$200. This amount will cover some of the increased costs of the program since the last fee adoption and cover the anticipated recurring costs of implementation of the electronic submission program. The Department believes this amount is not unduly burdensome to the industry because utilizing the electronic submission process will result in savings in courier and overnight delivery services and printing costs that should more than offset the fee increase. The Department is adopting consistent codes for its site built and non-site built programs. Adoption of these codes provides for consistency in the applicable codes for all types of construction regulated by the Department, allowing for easier integration of modular units into site built buildings and reducing problems if the unit is required to be inspected to the Life Safety Code after installation due to its occupancy and use. This promotes the public policy established in Tennessee Code Annotated § 68-120-101, which provides that types of construction materials or construction techniques will not be the basis for applying different codes. The Department is adopting rules regarding civil penalties to provide the public with guidelines on how the Department will issue civil penalties as authorized by Tennessee Code Annotated § 68-126-305(b)(5) (Public Acts 2007, Chapter 232).

Mr. Tom Hardiman submitted written comments on behalf of the Modular Building Institute: against increasing the bond requirement for a modular manufacturer from \$100,000 to \$500,000; in favor of moving to an electronic plan approval but suggested delaying the filing fee increase until the electronic system is in place; and suggesting adding to the information required to be submitted with an application for a manufacturer, dealer and installer whether the applicant has ever violated the Modular Building Institute's code of business ethics.

RESPONSE: The Department appreciates these comments and they have been taken into consideration. Based on these comments, similar comments and economic factors, the Department has decided that, while the current bond amount does not offer adequate consumer protection, raising the bond requirements may not be the best way to achieve increased consumer protection and, since this industry is a national industry, consideration of best practices in other states, including the use of insurance instead of bonding, should be considered to ensure that the least burdensome method to provide adequate consumer protection is adopted.

The roll out of the electronic plan submission and approval program for this industry is expected to be delivered prior to the effective date of these rules. Roll out is currently scheduled for May 1, 2009. The Department appreciates the Modular Building Institute's commitment to business ethics; however, because the Modular Building Institute is a voluntary organization the Department has decided not to request information on violations of their code of ethics for consideration when issuing a license.

Mr. Gary Humphrey of Pac-Van Inc. submitted written comments against the proposed rule changes.

RESPONSE: The Department appreciates these comments and they have been taken into consideration. Based on these comments, similar comments and economic factors, the Department has decided that, while the current bond amount does not offer adequate consumer protection, raising the bond requirements may not be the best way to achieve increased consumer protection and, since this industry is a national industry, consideration of best practices in other states, including the use of insurance instead of bonding, should be considered to ensure that the least burdensome method to provide adequate consumer protection is adopted. The Modular Building Program does not receive any state revenue dollars. Fees collected by the program pay for the administrative costs associated with the program. The filing fees were increased to \$100 in 2004 from the original fee of \$20 that was adopted in 1986. Based on further information received relative to implementation of the electronic submission program, the Department has reduced the filing fee increase to \$150, rather than \$200. This amount will cover some of the increased costs of the program since the last fee adoption and cover the anticipated recurring costs of implementation of the electronic submission program. The Department believes this amount is not unduly burdensome to the industry because utilizing the electronic submission process will result in savings in courier and overnight delivery services and printing costs that should more than offset the fee increase. The Department is adopting consistent codes for its site built and non-site built programs. Adoption of these codes provides for consistency in the applicable codes for all types of construction regulated by the Department, allowing for easier integration of modular units into site built buildings and reducing problems if the unit is required to be inspected to the Life Safety Code after installation due to its occupancy and use. This promotes the public policy established in Tennessee Code Annotated § 68-120-101, which provides that types of construction materials or construction techniques will not be the basis for applying different codes. The Department is adopting rules regarding civil penalties to provide the public with guidelines on how the Department will issue civil penalties as authorized by Tennessee Code Annotated § 68-126-305(b)(5) (Public Acts 2007, Chapter 232).

Mr. Jeffrey Inks of the National Modular Housing Council submitted written comment against increasing the bond requirement for a modular manufacturer from \$100,000 to \$500,000 and against raising the filing fee.

RESPONSE: The Department appreciates these comments and they have been taken into consideration. Based on these comments, similar comments and economic factors, the Department has decided that, while the current bond amount does not offer adequate consumer protection, raising the bond requirements may not be the best way to achieve increased consumer protection and, since this industry is a national industry, consideration of best practices in other states, including the use of insurance instead of bonding, should be considered to ensure that the least burdensome method to provide adequate consumer protection is adopted. The Modular Building Program does not receive any state revenue dollars. Fees collected by the program pay for the administrative costs associated with the program. The filing fees were increased to \$100 in 2004 from the original fee of \$20 that was adopted in 1986. Based on further information received relative to implementation of the electronic submission program, the Department has reduced the filing fee increase to \$150, rather than \$200. This amount will cover some of the increased costs of the program since the last fee adoption and cover the anticipated recurring costs of implementation of the electronic submission program. The Department believes this amount is not unduly burdensome to the industry because utilizing the electronic submission process will result in savings in courier and overnight delivery services and printing costs that should more than offset the fee increase.

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

1. Types of small businesses directly affected:

All small businesses that are installers, dealers and manufacturers of modular building units doing business within the State of Tennessee and small design review agencies and construction inspection agencies approved by Tennessee will be affected by these rules. This is most of the licensees and registrants of the program.

2. Projected reporting, recordkeeping, and other administrative costs:

There is no foreseeable alteration in small business reporting or recordkeeping requirements that will result from the promulgation of these rules. Affected businesses will eventually need to purchase updated code materials; however, these codes are uniform codes and are used for the production of modular units to be used in other states. The Department is not requiring any new reporting, but it is clarifying when certain documents must be submitted. The Department will begin to accept reports, plans and specifications, manuals and label requests electronically. It is anticipated that electronic submission will reduce administrative costs for licensees and registrants by eliminating the need to print and mail multiple copies of documents and reduce administrative costs for the Department.

3. Probable effect on small businesses:

There may be some additional construction costs associated with modular building units due to the updated and new codes and the increased filing fees for model plans, building system manuals, compliance assurance manuals. The electronic filing of materials should reduce printing and mailing costs and may reduce time necessary for the issuance of approvals. The cost savings should offset the increase in the filing fee. Also, the Department will be requiring that modular buildings be built to two (2) additional codes, the 2006 editions of the International Fire Code and the Life Safety Code (NFPA-101) as adopted by the Codes Enforcement Section. This could increase construction costs, but will result in greater safety to the consumers of modular building units, allow for easier integration of modular units into site built buildings and reduce problems if the unit is required, due to its occupancy and use, to be inspected to the Life Safety Code after installation.

4. Less burdensome, intrusive, or costly alternative methods:

The proposed changes to the existing rules are minimally burdensome/intrusive to small businesses. The necessary costs to small businesses to implement the changes required by the proposed changes and additions to the rules are offset by the protections provided to citizens of Tennessee and the anticipated savings from electronic submission. The Department has worked to keep all fees at the minimum level necessary to operate the program and maintain its self sufficiency. The Department anticipates electronic filing of materials should reduce printing and mailing costs for licensees, registrants and the Department, will reduce transmission (mail) time and may reduce time necessary for the issuance of approvals.

The Division has seen an increase in the number of modular buildings used for educational occupancies which are inspected annually to the Life Safety Code. The Division believes that, by adopting the Life Safety Code and the International Fire Code as construction standards, it will eliminate inconsistent standards between construction and inspection. This will prevent schools from being required to retrofit a new modular building to meet the requirements of the Life Safety Code a year after moving into the modular building.

5. Comparison with federal and state counterparts:

There are no federal counterparts to the issues addressed by these rules.

6. Effect of possible exemption of small businesses:

In order to ensure the health, safety and welfare of the citizens of Tennessee, it is imperative that small businesses are held to the same standards as larger businesses regarding the design, construction and

installation of modular building units. A majority of the modular building program's licensees and registrants are small businesses and exempting them would result in having standards that cannot be enforced.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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 add the statutory definitions of "Commissioner" and "Department" to the rules and clarify that "component" does not mean panelized construction.

The amendments adopt by reference the 2006 editions of the codes currently enforced by the Department for modular building units, except that the amendments propose to adopt the 2008 edition of the National Electric Code with the exceptions adopted by the Department's Electrical Inspection Section which became effective January 28, 2009. The amendments also adopt the 2006 editions of the International Fire Code and Life Safety Code (NFPA 101) as they were adopted by the Department's Codes Enforcement Section. This will bring greater consistency in the codes and editions of the codes enforced by the Department for building construction and safety which should reduce potential confusion by the public. The amendments also adopt a transition period of sixty (60) to allow manufacturers of modular building unit more time to build units to already approved plans for the codes being replaced while they are drafting new plans to meet the new codes.

The amendments also clarify the penalties for the late renewal of a license or approval issued by the Department and clarify that a new license or approval is required for a change in ownership. The amendments specifically require construction inspection agencies to submit monthly inspection reports and monthly production reports and to submit certification reports within thirty (30) days of the initial plant certification inspection. These reports are currently required, but there are no guidelines as to when they must be submitted to the Department. The amendments allow for more frequent inspections by the construction inspection agency upon the request of the Department or if the manufacturer fails to follow compliance assurance programs. The amendments also allow design review agencies to accept plans electronically to facilitate the electronic submission of plans to the state.

The amendments require model plans to also include: UL or equivalent assembly details and all application instructions on tenant separation walls; the location of smoke detectors; and the location, size and access to automatic air admittance valves.

Additionally, the amendments: allow the Department to accept the electronic filing of documents, plans, reports and label requests; raise the filing fees for model plans, building system manuals, compliance assurance manuals to one hundred fifty dollars (\$150); and allow the Department to charge a convenience fee to recover the costs of any electronic payment. The amendments also raise the fee for field technical services to forty dollars (\$40) per hour.

Finally, the amendments establish the guidelines the Commissioner will consider when issuing civil penalties for violations of the modular building unit laws and regulations as authorized by statute. The authority to issue civil penalties was granted by the Legislature in 2007.

- (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;

The Rules are promulgated pursuant to the Tennessee Modular Building Act, Tenn. Code Ann. §§ 68-120-301 et seq.

- (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;

Installers, dealers and manufacturers of modular building units doing business within the State of Tennessee and design review agencies and construction inspection agencies approved by Tennessee will be affected by these rules. Members of the Home Builders Association of Tennessee and the Departments of Human Services, Education and Correction and to the Tennessee Board of Regents and the University of Tennessee are also impacted by this rule. The Department received comments from the Home Builders Association of Tennessee, five (5) modular building manufacturers, a construction inspection agency and two (2) national organizations. The Department amended its proposal to address the most of the concerns of these entities.

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

I am unaware of any opinion of the attorney general 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;

The rules are expected to have minimal impact on state government revenues and expenditures. There are approximately 550 filings of model plans, building system manuals and compliance assurance manuals each year. The rules are expected to have no impact on local government revenues or expenses. The Department has received very few requests for field technical assistance in the past; however, the Department felt it was necessary to increase this fee to ensure that the costs associated with any field technical assistance provided in the future are covered.

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

Jim Pillow, Assistant Commissioner for the State Fire Marshal's Office, Joe Damons, Director of Codes Enforcement Section, and Patrick Merkel have substantial knowledge and understanding of these rules.

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

Jim Pillow, Joe Damons and Patrick Merkel will explain the rules at any scheduled meeting of the Government Operations Committee.

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

Jim Pillow and Joe Damons can be reached at State Fire Marshal's Office, Codes Enforcement Section, 500 James Robertson Parkway, Davy Crockett Tower 3rd Floor, Nashville, Tennessee 37243, (615) 741-7190. Patrick Merkel can be reached at Office of General Counsel, 500 James Robertson Parkway, Davy Crockett Tower, 5th Floor Nashville, Tennessee 37243, (615) 741-9462.

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