

Notice of Rulemaking Hearing

Department of Commerce and Insurance Division of Fire Prevention

There will be a hearing before the Commissioner of Commerce and Insurance or her designee to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, §§62-32-103, 62-32-202, 68-102-102, 68-102-113, 68-105-108, and 68-135-107. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, §4-5-204, and will take place in Room 160 on the 1st floor of the Davy Crockett Tower, located at 500 James Robertson Parkway in Nashville, Tennessee at 9 a.m. (Central Time) on the 16th day of September, 2008.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Commerce and Insurance to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (Sept 16, 2008), to allow time for the Department of Commerce and Insurance to determine how it may reasonably provide such aid or service. Initial contact may be made with Don Coleman, the Department's ADA Coordinator, at 500 James Robertson Parkway, 5th Floor, Nashville, Tennessee 37243 at (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact: Joseph M. Underwood, Assistant General Counsel for the Division of Fire Prevention at 500 James Robertson Parkway, Davy Crockett Tower, 12th Floor, Nashville, Tennessee 37243, telephone (615) 741-3899.

Substance of Proposed Rules

Chapter 0780-02-07 Fire Protection Sprinkler System Contractors

Amendments

Rule 0780-02-07-.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:

For purposes of this Chapter, unless the context otherwise requires, the definitions of terms contained in Tenn. Code Ann. §62-32-101 are applicable. In addition:

- (1) "Business" means the planning, selling, installing, or servicing of fire protection sprinkler systems.
- (2) "Certificate" means a certificate of registration issued to a fire protection sprinkler contractor by the Department of Commerce and Insurance.
- (3) "Inspection" means a visual examination of a sprinkler system or portion thereof to verify that it appears to be in operating condition and free from physical damage.
- (4) "License" means a license issued by the Department of Commerce and Insurance to a responsible managing employee.
- (5) "NFPA" means the National Fire Protection Association, Inc., a nationally recognized standards making organization.
- (6) "NICET" means the National Institute for the Certification in Engineering Technology.

- (7) "Point of Service" means the point immediately after the tap of the service main where water is used exclusively for fire protection purposes.
- (8) "Repair" means any work performed after initial installation on a fire protection sprinkler system, not including inspecting and testing.
- (9) "Service" means to repair, test, or inspect. For the purposes of Tenn. Code Ann. Title 62, Chapter 32, Part 1, the definition of service does not include the inspection or testing of backflow preventers by employees or agents of public water systems regulated under Tenn. Code Ann. §68-221-701, et seq. and Tenn. Comp. R & Regs. 1200-5-1-.17.
- (10) "Shop Drawings" means working drawings indicating the fabrication, assembly, installation or erection of a fire protection sprinkler system's components.
- (11) "Standards" means those standards adopted herein.
- (12) "Test" means subsection of a fire protection sprinkler system to any procedure necessary to insure its proper operation or installation.
- (13) "Water Supply" means public and private utility water mains, gravity tanks, pressure tanks, reservoirs, wells, and all other water sources.

Authority: T.C.A. §62-32-103.

Rule 0780-02-07-.02 Purpose 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:

The purpose of this Chapter is to regulate persons engaged in the business of planning, selling, installing, or servicing fire protection sprinkler systems in the interest of safeguarding lives and property pursuant to Tenn. Code Ann. §62-32-103.

Authority: T.C.A. §62-32-103.

Rule 0780-02-07-.03 Adoption by Reference of 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:

Unless otherwise provided by applicable law or the provisions of this Chapter, the required minimum standards for planning, selling, installing, and servicing fire protection sprinkler systems shall be as prescribed in Tenn. Comp. R & Regs. 0780-2-2, as may be amended from time to time.

Authority: T.C.A. §62-32-103.

Rule 0780-02-07-.04 Certification of Registration 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) Any application for a certificate of registration as a fire protection sprinkler system contractor must be signed by the sole proprietor, by each partner of a partnership, or by the president and secretary of a corporation or organization. The application shall include written authorization for representatives of the Department to enter, examine, and inspect any premise, building, room, or establishment used by the applicant while engaged in the business to determine compliance with Tenn. Code Ann. Title 62, Chapter 32, Part 1.
- (2) Every fire protection sprinkler system contractor shall maintain a specific business location, which shall be indicated on the certificate.

- (3) A change in ownership invalidates the current certificate. To assure continuance of registration, an application for a new certificate should be submitted to the Department at least fourteen (14) days prior to such change.
- (4) Any change in a corporation's president or secretary must be reported in writing to the Department within fourteen (14) days. A revised certificate will not be required when such change is properly reported.
- (5) A certificate does not authorize any person to enforce this Chapter or to enter any building without permission
- (6) A revised certificate will be required in the event of a change of a company's name which does not include a company's change of ownership. Any such change must be reported within fourteen (14) days.
- (7) Any application that remains pending for twelve (12) months will expire. Refundable fees will be refunded if a written request is made to the Department within six (6) months of the expiration of the application.

Authority: T.C.A. §§62-32-103, 62-32-105, and 62-32-107.

Rule 0780-02-07-.05 Responsible Managing Employee License 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) An application for a license as a responsible managing employee shall include:
 - (a) Proof of registration in Tennessee as a professional engineer or architect; or
 - (b) A copy of NICET's letter notifying the applicant of successful completion of the examination for certification of level III for fire protection engineering technician.
- (2) The fire protection sprinkler system contractor for which an individual serves as a responsible managing employee will be noted on the face of the license.
- (3) A revised license is required in the event of:
 - (a) Termination of employment as responsible managing employee;
 - (b) New employment as responsible managing employee; or
 - (c) Change of mailing address.
- (4) Within fourteen (14) days after the occurrence of any change requiring revision of a license, the licensee shall notify the Department in writing of the change and surrender the license.
- (5) A duplicate license must be obtained from the Department to replace a lost or destroyed license. The licensee shall promptly notify the Department in writing of the loss or destruction.
- (6) A licensee shall not permit the use of his license by other persons.
- (7) Any application that remains pending for twelve (12) months will expire. Refundable fees

will be refunded if a written request is made to the Department within six (6) months of the expiration of the application.

Authority: T.C.A. §§62-32-103 and 62-32-106.

Subparagraph (c) of paragraph (1) of rule 0780-02-07-.07 Fees 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:

(c) Duplicate certificate or license \$75.00

Authority: T.C.A. §62-32-107(b).

Paragraph (3) of rule 0780-02-07-.07 Fees 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:

(3) A renewal application accompanied by the required fee is deemed to be timely filed if received before or on the expiration date of the certificate or license for which renewal is sought.

Authority: T. C. A. §§62-32-103, 62-32-107, and 62-32-110.

Rule 0780-02-07-.08 Installation, Inspection and Service 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) All fire protection sprinkler systems under Tenn. Code Ann. §§62-32-101 and 62-32-103 shall be installed under the supervision of a licensed responsible managing employee.
- (2) Installation of fire protection sprinkler systems, beginning at the point of service, shall be in compliance with all applicable laws, codes, and standards.
- (3) Upon completion of installation, the responsible managing employee shall post a contractor's material and test certificate for aboveground and underground piping where appropriate, on or near the system riser. This certificate shall be obtained from the Department and shall be distributed as follows:
 - (a) Original copy to be kept at the fire protection sprinkler system site.
 - (b) Second copy to be retained by the installer.
 - (c) Third copy to be sent to the local authority having jurisdiction within ten (10) days after completion of the installation.
 - (d) Fourth copy to be sent to the Department within ten (10) days after completion of the installation.
- (4) Inspection and service, where required, shall be conducted by a registered fire protection sprinkler system contractor in accordance with the standards. Written reports of inspections shall be completed and filed in accordance with paragraph (3) of this rule.
- (5) Complete records shall be kept of the tests and operations of each system. The records shall be available for examination by the State Fire Marshal or its representative.
- (6) Simple maintenance of the fire protection sprinkler system, such as replacing a sprinkler head, may be performed by the owner, or by full-time persons employed by the owner of the sprinkler system.

- (7) If a registered professional architect or engineer is acting in the capacity of a fire protection sprinkler system contractor, such as installing or overseeing the installation of the sprinkler system, he or she must be registered with the Department as a fire protection sprinkler system contractor. Registration is not required if acting solely in his or her professional capacity as a designer of the fire protection sprinkler system.
- (8) New installation of a fire protection sprinkler system must be performed by a fire protection sprinkler system contractor registered by the Department, or by his or her responsible managing employee licensed by the Department and on staff with the contractor.

Authority: T.C.A. §§62-32-101, 62-32-102, and 62-32-103.

Rule 0780-02-07-.09 Sprinkler System Shop Drawings 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) On projects whose construction plans and specifications are subject to reviews by the Department under Tenn. Comp. R & Regs. 0780-2-3, fire protection sprinkler system shop drawings (and where applicable, hydraulic calculations) shall be submitted to the Department for approval prior to installation of the system. Such shop drawings shall be accompanied by the prescribed plans review submittal form and fee.
- (2) Shop drawings submitted to the Department for review shall be sufficiently detailed to enable the reviewer to determine accurately whether the proposed installation would be in compliance with the standards. In addition, shop drawings shall provide information relating to the methods of valve supervision and type of alarm system provided.
- (3) Where shop drawings have been submitted to the Department for review, subsequent alterations or additions shall be noted and submitted on updated shop drawings. When an alteration consists of ten (10) sprinkler heads or less and all floor areas were protected prior to the alteration, updated shop drawings need not be submitted. Shop drawings must be submitted for all alterations consisting of more than ten (10) sprinkler heads. Shop drawings must also be submitted for addition to systems protecting previously unprotected areas.
- (4) Shop drawings submitted to the Department for review shall bear the:
 - (a) Certificate number of the contractor;
 - (b) Date of preparation of the shop drawings; and
 - (c) Signature and license number of the responsible managing employee.

Authority: T.C.A. §§62-32-103 and 62-32-112.

Substance of Proposed Rules

Chapter 0780-2-14 Fire Extinguishers

Amendments

Rule 0780-2-14-.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:

For purposes of this Chapter, unless the context otherwise requires, the definitions of terms contained in Tenn. Code Ann. §62-32-203 are applicable. In addition:

- (1) "Authorization" means authorization issued by the Division (and noted on a firm's certificate of registration) to perform hydrostatic testing.
- (2) "Business" means the installation or service of portable fire extinguishers or fixed fire extinguisher systems.
- (3) "Certificate" means a certificate of registration issued by the Division to a firm, or to a branch office of a firm.
- (4) "Impairment" means a condition which would not permit a portable fire extinguisher or fixed fire extinguisher system to operate in a manner consistent with its original design and installation.
- (5) "Inspection" means the act of checking portable fire extinguishers or fixed fire extinguisher systems against the applicable specifications, standards, and manufacturer's installation manuals. An inspection shall not include items required to be inspected at thirty (30) day intervals as indicated by Standard for Portable Fire Extinguishers (NFPA 10-2007), published by the National Fire Protection Association (NFPA).
- (6) "License" means a license issued by the Division to an extinguisher specialist.
- (7) "Manufacturer's examination" means an examination on the business which is either:
 - (a) administered by a manufacturer or portable fire extinguishers and/or fixed fire extinguisher systems and approved by the Division; or
 - (b) administered or sanctioned by the Division.
- (8) "NFPA" means the National Fire Protection Association, Inc., a nationally recognized standards making organization.
- (9) "Permit" means a permit issued by the Division to an extinguisher technician.
- (10) "School" means a course of instruction or study on the business.
- (11) "Standards" means the standards for the installation and service of portable fire extinguishers and fixed fire extinguisher systems established by Tenn. Comp. R & Regs. 0780-2-14-.02.

Authority: T. C. A. §§62-32-202 and 62-32-211.

Paragraph (1) of rule 0780-2-14-.02 Standards 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) Unless otherwise provided by applicable law or the provisions of this Chapter, the standards for the installation and service of portable fire extinguishers and fixed fire extinguisher systems in the State of Tennessee shall be those prescribed in:
 - (a) Standard for Portable Fire Extinguishers (NFPA 10-2007), published by the National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02269.

- (b) Standard on Carbon Dioxide Extinguishing Systems (NFPA 12-2008), published by the NFPA.
- (c) Standard on Halon 1301 Fire Extinguishing Systems (NFPA 12A-2004), published by the NFPA.
- (d) Standard for Dry Chemical Extinguishing Systems (NFPA 17-2002), published by the NFPA.
- (e) Standard for Wet Chemical Extinguishing Systems (NFPA 17A-2002), published by the NFPA.
- (f) Standard on Wetting Agents (NFPA 18-2006), published by the NFPA.
- (g) Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations (NFPA 96-2008), published by the NFPA.
- (h) Standard for Aircraft Hand Portable Fire Extinguishers (NFPA 408-2004), published by the NFPA.
- (i) Standard on Clean Agent Fire Extinguishing Systems (NFPA 2001-2008), published by the NFPA.
- (j) Standard for Fixed Aerosol Fire-Extinguishing Systems (NFPA 2010-2006), published by the NFPA.

Authority: T. C. A. §§62-32-202 and 62-32-211.

Subparagraph (b) of paragraph (1) of rule 0780-2-14-.05 Extinguisher Specialist License 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) Satisfactory proof of the applicant's successful completion of a manufacturer's examination and school, or proof of satisfactory completion of an examination administered by the Division or its designee.

Authority: T. C. A. §§62-32-202, 62-32-204, and 62-32-211.

Paragraph (1) of rule 0780-2-14-.06 Extinguisher Technician Permit 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) An application for an extinguisher technician permit shall include satisfactory proof of the applicant's successful completion of a manufacturer's examination and school, or proof of successful completion of an examination administered by the Division or its designee. Such examination may be less comprehensive and rigorous than that required by an applicant for an extinguisher specialist license.

Authority: T. C. A. §§62-32-202, 62-32-204, and 62-32-211.

Subparagraph (b) of paragraph (1) of rule 0780-2-14-.14 Fees 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) Authorization to perform hydrostatic testing of fire extinguishers

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| 1. | Initial | \$50 |
| 2. | Renewal | \$25 |

Authority: T. C. A. §§62-32-202, 62-32-204, and 62-32-211.

Paragraph (3) of rule 0780-2-14-.14 Fees 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:

- (3) A renewal application accompanied by the required fee is deemed to be timely filed if it received before or on the expiration date of the license or registration for which renewal is sought.

Authority: T. C. A. §§62-32-202, 62-32-204, 62-32-210, and 62-32-211.

Rule 0780-2-14-.14 Fees is amended by adding the following language as a new paragraph so that, as amended, the paragraph shall read:

- (4) The Division, or its designee, administering the examination may charge an appropriate fee to be paid by the applicant for each examination or reexamination for portable or fixed extinguisher specialist license, or portable or fixed extinguisher technician permit.

Authority: T. C. A. §§62-32-202, 62-32-204, 62-32-210, and 62-32-211.

Substance of Proposed Rules

Chapter 0780-2-15 Blasting Standards

Amendments

Rule 0780-2-15-.03 Registration and Fees is amended by adding the following language as a new paragraph so that, as amended, the paragraph shall read:

- (15) The Department may designate a third party to administer and charge a reasonable fee for each examination or reexamination administered to applicants for blaster's and limited blaster's registrations.

Authority: T. C. A. §§68-105-106, 68-105-108, 68-105-114, and 68-105-116.

Rule 0780-2-15-.03 Registration and Fees is amended by adding the following language as a new paragraph so that, as amended, the paragraph shall read:

- (16) Any application that remains pending for twelve (12) months will expire. Refundable fees will be refunded if a written request is made to the Department within six (6) months of the expiration of the application.

Authority: T. C. A. §§68-105-106, 68-105-108, 68-105-114, and 68-105-116.

Rule 0780-2-15-.05 Continuing Education 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) As a prerequisite to renewing registration, registrants are required to obtain the following continuing education credits per renewal cycle:
 - (a) Blasters must obtain sixteen (16) hours of continuing education credits;
 - (b) Limited blasters must obtain eight (8) hours of continuing education credits;
 - (c) Handlers must obtain six (6) hours of continuing education credits.
- (2) A continuing education course must be approved by the Commissioner or his or her authorized representative before the registrant will be granted credit for the course.
- (3) The registrant shall provide verification to the Commissioner or his or her authorized representative of having obtained the continuing education credits required by this rule. Verification consists of a form certifying attendance at the course and the number of continuing education hours obtained at the course and signed by both the registrant and the course instructor.
- (4) The registrant shall submit to the Commissioner or his or her authorized representative the registrant's verification form after taking the course and prior to the expiration of his or her registration. The registrant is responsible for ensuring timely submittal of the required verification. Documentation that shows that the registrant self-taught himself or herself without course instruction will not be accepted for continuing education credit.
- (5) In order to obtain approval to provide course instruction, the course provider shall submit to the Commissioner or his or her authorized representative materials including an outline of the course instruction, biography of the instructor, the methods and tools that will be utilized in the course, number of instruction hours provided and the dates and times the course will be offered. A course provider seeking approval of a course pursuant to this paragraph shall submit the required documentation no later than ten (10) business days prior to the first offering of the course.
- (6) A blaster, limited blaster or handler may apply on an individual basis for continuing education credit for a course which has not been approved in advance by the Commissioner or his or her authorized representative by submitting an agenda, number of instructional hours provided, biography of the instructor, the dates and times the course was offered, verification of attendance by both the registrant and the course instructor and any additional information requested by the Commissioner or his or her authorized representative as necessary for review of the course. A blaster, limited blaster or handler seeking approval of a course pursuant to this paragraph shall submit the required documentation no later than thirty (30) days after having taken the class. No credit for the course will be awarded unless and until the course is approved by the Commissioner or his or her authorized representative.
- (7) Credit will be given to instructors who are registered for the teaching of courses. Instructors who are registered blasters may receive up to six (6) hours of credit for teaching per renewal cycle. Instructors who are registered limited blasters may receive up to four (4) hours of credit for teaching per renewal cycle. Instructors who are registered handlers may receive up to two (2) hours of credit per renewal cycle. Instructors shall receive credit only once for teaching an approved course.
- (8) Credit may be granted for educational offerings which cover blasting-related topics such as those listed in paragraph (9) below which are consistent with the purpose of continuing education. Training may include a combination of classroom and/or practical field exercises.

- (a) The viewing of video tapes is not acceptable for continuing education credit unless incorporated into a course wherein an instructor is available to accurately respond to questions raised from the viewing and correct any outdated information contained in the video tape.
 - (b) Acceptable sources of training are any in-state or out-of-state individuals, associations or entities that provide or deliver courses of instruction, training or educational sessions.
- (9) The following list is not a complete list of continuing education topics, but the list represents acceptable course content:
- (a) Job site:
 - 1. Blast planning (including measuring the blast zone and selection of the drill bit size);
 - 2. Blast site safety (including loading of holes, initiation of the blast and firing of the shot);
 - (b) Commerce in explosives (Federal and State requirements);
 - (c) United States Department of Transportation requirements (including proper packaging and labeling and commingling hazardous material);
 - (d) Subjects related to explosives, which can include the following:
 - 1. New products;
 - 2. Magazine housekeeping;
 - 3. Blast design;
 - 4. Safety;
 - 5. Packing and unpacking explosives;
 - 6. Storage practices;
 - 7. Magazine construction;
 - 8. Placarding;
 - 9. Handling misfires.
- (10) Registrants who take more than the required continuing education for the previous renewal period will not be permitted to carry-over the credit hours into the next renewal cycle.
- (11) The Commissioner may conduct random audits of registrants and continuing education courses to assure compliance with this rule. Each registrant is responsible for maintaining sufficient records which may be used to support claimed continuing education credits.

Authority: T. C. A. §§68-105-108, 68-105-116, and 68-105-121.

Substance of Proposed Rules
Chapter 0780-2-17
Liquefied Petroleum Gas Safety Regulations

Amendments

Rule 0780-2-17-.01 Definitions is amended by deleting the language of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

For purposes of this Chapter, unless the context otherwise requires, the definitions of terms contained in Tenn. Code Ann. §68-135-101 are applicable. In addition:

- (1) "Division" shall mean the Division of Fire Prevention of the Department of Commerce and Insurance.
- (2) "NFPA" shall mean the National Fire Protection Association, Inc., a nationally recognized standards making organization.
- (3) "Responsible Managing Employee (R.M.E.)" shall be the person responsible for active management of a licensed liquefied petroleum gas dealer facility, except for Class V facilities.
- (4) "Good engineering practice" and the "bottle exchange business" shall be used to describe the type of safe placement for liquefied petroleum gas containers awaiting commercial use or resale.

Authority: T.C.A. §§68-102-113, 68-135-101, and 68-135-107.

Rule 0780-2-17-.02 Adoption by Reference is amended by deleting the language 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 required minimum standards of engaging in the liquefied petroleum gas business in the State of Tennessee shall be those prescribed in Tenn. Code Ann. §68-135-101 et seq., and those in the following publications published by the National Fire Protection Association, Inc. (NFPA), Post Office Box 9101 Batterymarch Park, Quincy, Massachusetts 10029-9101:
 - (a) The 2008 edition of NFPA 58: Liquefied Petroleum Gas Code in its entirety; and
 - (b) Those applicable portions of the 2006 edition of NFPA 54: National Fuel Gas Code that are related to liquefied petroleum gas in the vapor phase.
- (2) In the event of a conflict or inconsistency between these codes adopted by reference, the more stringent code provision shall control; and in the event of a conflict or inconsistency between these codes adopted by reference and Tenn. Code Ann. §68-135-101 et seq., the provisions of Tenn. Code Ann. §68-135-101 et seq. shall control.
- (3) Except where the context requires otherwise and in no way excluding the NFPA definitions adopted by reference, these rules adopt the same purpose and definitions as found in Tenn. Code Ann. §68-135-101.

Authority: T.C.A. §§68-102-113, 68-135-101, and 68-135-107.

Rule 0780-2-17-.03 Examinations and Responsible Managing Employees is amended by deleting the language of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) At all liquefied petroleum gas business facilities in Tennessee, including all dealers licensed as Class I, Class II, Class III, and Class IV, where those facilities are directly engaging in the delivering, installing, or servicing of liquefied petroleum gas equipment, there shall be at least one person or full-time employee thereof to be known hereafter as the R.M.E. (i.e., responsible managing employee) whose responsibility shall be to ensure compliance with the safety standards adopted in this Chapter within their individual business facility by being present within the service area of the facility or by remaining readily available by telephonic or other immediate communication means with company employees within said business facility when offsite.
- (2) The R.M.E. shall be determined and designated by all licensees at each and every business facility currently licensed and engaging in the activities described in paragraph (1) of this rule, which shall mean one individual per location. All applicants who become licensed after the effective date of these rules will from the date of receiving their license have three months to designate an R.M.E. and so inform the Division. The information designating the R.M.E. must be submitted, along with a statement affirming that the R.M.E. will comply with paragraph (1) of this rule, on a form as prescribed by the Division.
- (3) All licensees must provide notification on a form prescribed by the Division within fourteen (14) days of any change in designation of their R.M.E.
- (4) The R.M.E. shall be examined by the Division for the purpose of determining whether he/she has adequate knowledge of these regulations promulgated by the State Fire Marshal in the interest of safeguarding life, health, and property.
- (5) The R.M.E. may for the express language of NFPA 58 be construed to mean the training agent referred to in that section.
- (6) This rule will not affect the applicant, or in the case of a firm or corporation, the person charged with the active management thereof, whether or not that person is designated as an R.M.E., who will also be examined for the stated purpose by the Division as per Tenn. Code Ann. §68-135-103.
- (7) The examination shall cover the minimum standards of the codes adopted by reference herein, and may include material from a national certification program. The examination shall be given by the Division, or its designee, at its discretion and at reasonable times and locations to all those persons as required by law and these rules to take the examination.
- (8) The applicant, or in the case of a firm or corporation, the person charged with the active management thereof, and/or the R.M.E. should contact the Division of Fire Prevention, Permits and Licenses Section, or its designee, for arrangements to take the examination within the time limits stated in paragraph (2) of this rule.
- (9) The Division, or its designee, administering the examination may charge an appropriate fee to be paid by the applicant for each examination or reexamination.

Authority: T.C.A. §§68-102-113, 68-135-102, 68-135-103, and 68-135-107.

Rule 0780-2-17-.04 Storage of Portable Containers Awaiting Use or Resale is amended by deleting the language of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

With respect to NFPA 58, section 8.4.2 as adopted herein, "good engineering practice" as it relates to what is commonly referred to as the "bottle exchange business" (where certain portable liquefied petroleum gas containers are in commerce awaiting use or resale), will require the safe placement of those containers at the establishment where they are located by the owner or person responsible for their placement. Such safe placement and storage will be subject to approval of the Division through its fire safety inspectors.

Authority: T.C.A. §§68-102-113, 68-135-103, and 68-135-107.

Rule 0780-2-17-.05 Penalties and Enforcement is amended by deleting the language of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Regarding the liquefied petroleum gas business in Tennessee, the Division shall undertake an active enforcement policy with regards to any violations, of Tenn. Code Ann. §68-135-101 et seq., and/or these regulations as adopted.
- (2) Any written complaints of violations of the law or regulations or reports made pursuant to Tenn. Code Ann. §68-135-109 shall result in an investigation by the Division to determine their validity. After such investigation if there are grounds to prove that an individual engaging in the liquefied petroleum gas business in Tennessee has violated the law or regulations, the State Fire Marshal shall convene a hearing after affording all due process under Tenn. Code Ann. §68-135-106. At the conclusion of such hearing, and upon a finding of fault the State Fire Marshal may revoke or suspend any license or renewal previously granted.
- (3) Where the violation is one which is particularly hazardous to the public or is in blatant disregard of the law or regulations, the State Fire Marshal may proceed in its discretion with either criminal or civil penalties as provided in the law at Tenn. Code Ann. §§68-135-110 and 68-135-111.

Authority: T.C.A. §§68-102-113, 68-135-106, 68-135-107, 68-135-110, and 68-135-111.

The notice of rulemaking hearing set out herein was properly filed in the Department of State on this the 31st day of July, 2008 (FS 07-26-08; DBID 889-892)