

**Department of State
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Tennessee Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 09-33-09
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Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Division of Fire Prevention
Contact Person:	Joseph Underwood
Address:	500 James Robertson Parkway Davy Crockett Tower, 3 rd Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-3899
Email:	Joseph.Underwood@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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
0780-02-16	Fire Prevention, Building, Plumbing, and Mechanical Inspector Certification Standards and Qualifications
Rule Number	Rule Title
0780-02-16-.01	General Requirements
0780-02-16-.02	Definitions
0780-02-16-.03	Registration
0780-02-16-.05	Standards and Qualifications
0780-02-16-.06	Re-Certification

(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>)

Chapter 0780-02-16
Fire Prevention, Building, Plumbing, and Mechanical Inspector Certification Standards and Qualifications

Amendments

Paragraph (2) of rule 0780-02-16-.01 General Requirements is amended by deleting the term “as candidate” from the paragraph so that, as amended, the paragraph shall read:

- (2) The applicant for certification shall show proof satisfactory to the Division that he or she understands applicable building, fire, plumbing, mechanical, or fuel gas codes, through the regulations set out herein. Post application matters not specifically addressed in these rules will be at the discretion of the Division.

Authority: T.C.A. §§ 68-102-113, 68-120-106, 68-120-113, and 68-120-118.

Paragraph (4) of rule 0780-02-16-.02 Definitions is amended by deleting the term “candidate” from the paragraph and substituting instead the term “applicant” so that, as amended, the paragraph shall read:

- (4) “Certification” shall mean that designation or certificate, to be conferred on the applicant by the State Fire Marshal after making application and showing a satisfactory requisite of understanding of applicable building, fire, plumbing, mechanical, or fuel gas codes.

Authority: T.C.A. §§ 68-102-113, 68-120-106, 68-120-113, and 68-120-118.

Paragraph (5) of rule 0780-02-16-.02 Definitions is amended by deleting the language of the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

- (5) “Continuing Education” means training courses attended by certificate holders which are directly related to area(s) of certification or to the relevant code(s) for the purpose of attaining credit for re-certification. The material covered in the course(s) shall provide information that is valuable to certificate holders in their duty as officials having jurisdiction to enforce the applicable fire, building, plumbing, mechanical, or fuel gas code. All training courses are approved in the discretion of the Division, and the number of credit hours awarded for participation in a course is determined by the Division.

Authority: T.C.A. §§ 68-102-113, 68-120-106, 68-120-113, and 68-120-118.

Paragraph (4) of rule 0780-02-16-.03 Registration is amended by deleting the term “candidate” from the paragraph and substituting instead the term “applicant” so that, as amended, the paragraph shall read:

- (4) The Division will issue a certificate and identification card upon its assurance that the applicant has satisfied all certification requirements. The certificate and identification card will be mailed to the business address given on the application form and will be valid for a period of three (3) years from the date of issuance.

Authority: T.C.A. §§ 68-102-113, 68-120-106, 68-120-113, and 68-120-118.

Rule 0780-02-16-.05 Standards and Qualifications 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:

In order to enable applicants for certification the opportunity to acquire the knowledge and skills required to attain certification, the Division will establish or contract for training courses which meet the minimum standards and qualifications necessary for certification under this chapter. These training courses will be made available to governmental employees and other individuals with building, fire safety, plumbing, mechanical, or fuel gas code inspection enforcement responsibilities.

Authority: T.C.A. §§ 68-102-113, 68-120-106, 68-120-113, and 68-120-118.

Rule 0780-02-16-.06 Re-Certification 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) Certification is valid for three (3) years. In order to obtain re-certification, certificate holders must submit a fee of thirty-five (\$35.00) dollars to the Division along with their application for re-certification properly filled out. The Division will send each certificate holder an application for re-certification at least sixty (60) days prior to the date of expiration of the original certificate. The application for re-certification will be mailed by the Division to the last known business address, unless the certificate holder has requested otherwise.
- (2) Certificate holders will have up to sixty (60) days following the expiration of their certification to fulfill all requirements for re-certification. All applications for recertification filed during this late period must be accompanied by a late penalty fee of ten (\$10.00) dollars in addition to the re-certification fee of thirty-five (\$35.00) dollars. Certifications are invalid during this period and inspections may not be performed.
- (3) Re-certification requirements can be met through one of the following three methods:
 - (a) Attendance and successful completion of Division approved training courses which provide instruction directly related to certificate holders' area(s) of certification or to the appropriate code(s) for the purpose of attaining credit for re-certification. Training courses should be approved in advance to receive credit; however, the Division, in its discretion, may approve a course after it is given. Organizations are encouraged to submit courses for approval by the Division for credit toward re-certification. There is a minimum requirement of thirty-six (36) hours of continuing education during the three (3) year certification period in order to obtain re-certification by this method. Proof of completion of thirty-six (36) hours of continuing education within thirty-six (36) months prior to re-certification must be attached to the application for re-certification when it is submitted to the Division. If certificate holders possess multiple certifications, certificate holders must show that they have obtained thirty-six (36) hours of continuing education within thirty-six (36) months prior to re-certification. Continuing education hours may count toward multiple re-certifications. In addition, certificate holders may request in writing to the Division that renewal dates for their multiple certifications be made the same date. To accommodate such requests, the Division may pro-rate the certification fee by one-third (1/3) or two-thirds (2/3) depending on the unused portion of a certification period. The Division will not be responsible for training expenses incurred by certificate holders.
 - (b) Successful completion of an examination administered at the discretion of the Division.
 - (c) Successful completion during the previous three (3) years of the next higher level of certification offered by a recognized and approved certifying organization as listed in Rule 0780-02-16-.04.

Authority: T.C.A. §§ 68-102-113, 68-120-106, 68-120-113, and 68-120-118.

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commissioner of Commerce and Insurance on 08/21/09 and is in compliance with the provisions of TCA § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.



Date: 8-21-09

Signature: Leslie A. Newman

Name of Officer: Leslie A. Newman

Title of Officer: Commissioner Department Commerce & Insurance

Subscribed and sworn to before me on: 8/21/09

Notary Public Signature: Denise M. Lewis

My commission expires on: 3/5/12

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

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter
9-18-09

Date

Department of State Use Only

Filed with the Department of State on: 9/25/09

Effective on: 2/28/10

Tre Hargett by [Signature], POA

Tre Hargett
Secretary of State

RECEIVED
2009 SEP 25 AM 10: 21
SECRETARY OF STATE
PUBLICATIONS

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

Regulatory Flexibility Analysis - Methods of Reducing Impact of Rules on Small Businesses:

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

There will be no overlap, duplication, or conflict with other federal, state or local governmental rules.

2. Clarity, conciseness, and lack of ambiguity in the rule or rule:

The proposed rules are clear in purpose and intended execution, and they are not open to different interpretations.

3. Flexible compliance and/or reporting requirements for small businesses:

The proposed rules do not require compliance or reporting requirements for small businesses.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

The proposed rules will clarify the Division of Fire Prevention's administrative methods for processing applications for re-certification of municipal, county and state government officials having jurisdiction to enforce the applicable fire, building, plumbing, mechanical, or fuel gas code throughout the State of Tennessee.

5. Consolidation or simplification of compliance or reporting requirements:

These proposed rules should simplify and make more efficient the renewal process currently required by the Division of Fire Prevention for the re-certification of municipal, county and state government officials having jurisdiction to enforce the applicable fire, building, plumbing, mechanical, or fuel gas code throughout the State of Tennessee.

6. Performance standards for small businesses:

There are no changes in the proposed rules in regards to performance standards for small businesses.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The Division of Fire Prevention does not anticipate that these rules will stifle entrepreneurial activity or curb innovation.

Economic Impact Statement:

1. Types of small businesses directly affected:

No small business is anticipated to be affected by these proposed rules since they involve amendments to the manner in which the Division of Fire Prevention processes renewal applications for the re-certification of municipal, county and state government officials having jurisdiction to enforce the applicable fire, building, plumbing, mechanical, or fuel gas code throughout the State of Tennessee.

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

There is no foreseeable alteration in small business recordkeeping that will result from the promulgation of these rules.

3. Probable effect on small businesses:

The Division of Fire Prevention does not anticipate that the proposed rules will have any effect on small businesses since the amendments clarify the manner in which municipal, county and state government officials having jurisdiction to enforce the applicable fire, building, plumbing, mechanical, or fuel gas code throughout the State of Tennessee may obtain continuing education credits for renewal of their certifications from the Division of Fire Prevention.

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

The proposed changes to the existing rules are minimally burdensome and intrusive to small businesses. The Division of Fire Prevention is unaware of a less costly alternative method in which to achieve the objectives of the amendments as proposed by these rules.

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:

The proposed rules provide for no exemption for small businesses.

Additional Information Required by Joint Government Operations Committee

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

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

The proposed amendments to Chapter 0780-02-16 will clarify the Division of Fire Prevention's administrative process for handling applications for re-certification of municipal, county and state government officials having jurisdiction to enforce the applicable fire, building, plumbing, mechanical, or fuel gas code throughout the State of Tennessee. The proposed rules also include other minor changes to make the rules more uniform and consistent. These minor changes include deleting "as candidate" from paragraph (2) of rule 0780-02-16-.01 altogether, and replacing "candidate" with "applicant" in rule 0780-02-16-.02(4) and in rule 0780-02-16-.03(4). In rule 0780-02-16-.05, "candidate" is replaced with "applicant"; "local" is deleted entirely; "government" is replaced with "governmental"; and lastly, the phrase "and other individuals" is added to the rule. The purpose of these changes are to make rule 0780-02-16-.05 more compatible with T.C.A. §§ 68-120-113 and 68-120-118 on which the rule is based. Other similar changes such as replacing "candidate" with "applicant" or "certificate holder" are made in paragraphs (1), (2), and (3) of rule 0780-02-16-.06. Another amendment includes deleting "Elective Hours" entirely from rule 0780-02-16-.02(5), and replacing it with the definition for "Continuing Education".

The proposed rules more significantly amend rule 0780-02-16-.06(3)(a) in particular by clarifying the method an applicant for re-certification may obtain the continuing education credits required for re-certification. The amendments will make it necessary for certificate holders to acquire a minimum of thirty-six (36) hours of continuing education hours during the three (3) year certification period in order to obtain re-certification by this method. In addition, certificate holders who possess multiple certifications will only need to show that they have completed thirty-six (36) hours of continuing education within thirty-six (36) months prior to re-certification. Also, continuing education hours may now count toward multiple re-certifications. Finally, certificate holders may request that renewal dates for their multiple certifications be made uniform for which the Division may pro-rate the certification fee by one-third (1/3) or two-thirds (2/3) depending on the unused portion of a certification period.

- (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;

I am unaware of any federal counterparts to the issues addressed by these rules.

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

These rules will affect all persons employed as municipal, county and state government officials who have jurisdiction to enforce the applicable fire, building, plumbing, mechanical, or fuel gas code throughout the State of Tennessee. These purpose of these rules are to provide for the efficient administration of the provisions required by T.C.A. §§ 68-120-113 and 68-120-118. The municipal, county and state government officials who are most affected by these rules have neither urged for nor rejected the adoption of these rules. However, the Fire Prevention, Building, Plumbing and Mechanical Inspectors Advisory Board has approved the amendments proposed by these rules.

- (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;

These rules are expected to have a neutral fiscal impact on the Department.

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

Chris Bainbridge, Director for Administrative Services Section, and Joseph Underwood, Assistant General Counsel for the Division, 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;

Chris Bainbridge, Director for Administrative Services Section, and Joseph Underwood, Assistant General Counsel for the Division, 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

Chris Bainbridge and Joseph Underwood may be reached at the Department of Commerce and Insurance, 500 James Robertson Parkway, 3rd Floor, Davy Crockett Tower, Nashville, Tennessee 37243, (615) 741-6246 or (615) 741-3899.

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