

Rulemaking Hearing Rules
of
Department of Commerce and Insurance
Division of Fire Prevention

Chapter 0780-02-02
Codes and Standards

Amendments

Subparagraph (1)(b) of rule 0780-02-02-.01 Adoption by Reference 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) ICC International Fire Code, 2006 edition, published by the International Code Council, Inc., 500 New Jersey Avenue Northwest, 6th Floor, Washington, D.C. 20001.

Paragraph (1) of rule 0780-02-02-.01 Adoption by Reference is amended by adding a new subparagraph (c) so that, as amended, the new subparagraph shall read:

- (c) 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, Life Safety Code (NFPA No. 101-2006), 2006 edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101.

Authority: T. C. A. § 68-120-101(a).

Rule 0780-02-02-.04 Conflicts 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) In the event of a conflict or inconsistency between the codes adopted by reference in rule 0780-02-02-.01:
 - (a) the provisions of the International Building Code shall prevail if such conflict or inconsistency relates to height, area restrictions or construction type;
 - (b) the provisions of the Tennessee Public Building Accessibility Act shall prevail if such conflict or inconsistency relates to accessibility; and
 - (c) the more stringent code provision shall prevail in all other cases.
- (2) In the event of a conflict or inconsistency between either code adopted by reference in rule 0780-02-02-.01 and Chapter 0780-2-1 (Electrical Installations) of the Rules and Regulations of the State of Tennessee, the provisions of Chapter 0780-2-1 (Electrical Installations) shall control.
- (3) Nothing in this rule shall abrogate any right of appeal granted under Tenn. Code Ann., Title 68, Chapters 102 and 120.

Authority: T. C. A. § 68-120-101(a).

Chapter 0780-02-03
Review of Construction Plans and Specifications

Amendments

Subparagraph (b) of Paragraph (1) of rule 0780-02-03-.01 Definitions 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) Construction means the erection of a new building, an addition to an existing building, a change of occupancy, an alteration that alters the exit arrangement, fire resistive assemblies, or type of construction, or involves the installation of fire suppression or detection systems or fuel-fired equipment. The term "construction" shall not be construed to include excavation or site preparation. When renovation or remodeling occurs in an existing building that does not result in an addition to the building, the existing life safety features that do not meet the requirements for new buildings, but that exceed the requirements for existing buildings, shall not be further diminished.

Authority: T. C. A. § 68-120-101(d).

Subparagraph (d) of Paragraph (1) of rule 0780-02-03-.01 Definitions 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) Educational occupancy means the use of a building or structure, or a portion thereof, for educational purposes by six (6) or more persons for more than twelve (12) hours per week, but no more than eight (8) hours in a single day. An educational facility is distinguished from assembly occupancy in that the same persons are regularly present.

Authority: T. C. A. § 68-120-101(d).

Subparagraph (e) of Paragraph (1) of rule 0780-02-03-.01 Definitions 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:

- (e) Detention and correctional occupancy, business occupancy, residential occupancy, place of assembly and covered mall shall be defined as in the 2006 edition of the International Building Code. High hazard industrial facility shall be defined as in the 2006 edition of the International Building Code for subclasses H-1 and H-2 only. Storage of high hazard materials shall not be considered as a high hazard industrial occupancy.

Authority: T. C. A. § 68-120-101(d).

Subparagraph (g) of Paragraph (1) of rule 0780-02-03-.01 Definitions 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:

- (g) In addition to the definitions provided by the 2006 edition of the International Building Code, existing structure means any building that has been occupied

continuously for a period of at least twelve (12) months without changing its occupancy classification.

Authority: T. C. A. § 68-120-101(d).

Paragraph (1) of rule 0780-02-03-.01 Definitions is amended by adding new subparagraphs (j), (k) and (l) so that, as amended, the new subparagraphs shall read:

- (j) Phased construction means the erection of a new structure or facility in different stages on a new site and consisting of a foundation, a shell and a final approval. Phased construction does not include renovations or remodeling of any existing structure or facility.
- (k) Dwelling unit means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
- (l) Sleeping unit means a room or space in which people sleep, which can also include permanent provisions for living, eating and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Authority: T. C. A. § 68-120-101(d).

Paragraph (1) of rule 0780-02-03-.02 Submission of Plans is amended by adding new subparagraph (d) so that, as amended, the new subparagraph shall read:

- (d) Facilities leased by the state located in a jurisdiction of local government that has obtained the exemption authorized by Tenn. Code Ann. § 68-120-101(b)(2).

Authority: T. C. A. § 68-120-101(d).

Paragraph (3) of rule 0780-02-03-.02 Submission of Plans 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) After July 1, 1983, no person shall commence construction of any business occupancy three (3) stories or more in height, or residential occupancy three (3) stories or more in height, excluding 1- and 2-family dwellings having less than twelve (12) sleeping units, less than twelve (12) dwelling units, or less than twelve (12) of a combination of sleeping and dwelling units as provided in Tenn. Code Ann. § 68-120-101(c)(1), until plans and specifications therefor have been submitted to and approved in writing by the Division.

Authority: T. C. A. § 68-120-101(d).

Paragraph (5) of rule 0780-02-03-.02 Submission of Plans 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:

- (5) After July 1, 2001, no person shall commence construction of any two (2) story residential occupancy having twelve (12) sleeping units or more, having twelve (12) dwelling units or more, or having a combination of twelve (12) or more

sleeping and dwelling units until plans and specifications therefor have been submitted to and approved in writing by the Division.

Authority: T. C. A. § 68-120-101(d).

Paragraph (7) and Subparagraph (a) of Paragraph (7) of rule 0780-02-03-.02 Submission of Plans are amended by deleting the text of the paragraph and subparagraph in their entirety and substituting instead the following language so that, as amended, the paragraph and subparagraph shall read:

- (7) Notwithstanding the foregoing paragraphs of this rule, any phased construction requiring approval by the Division may be undertaken prior to approval of final plans and specifications if:
 - (a) The Division has received a written request for phased construction approval;

Authority: T. C. A. § 68-120-101(d).

Paragraph (7) of rule 0780-02-03-.02 Submission of Plans is amended by adding new subparagraph (e) so that, as amended, the new subparagraph shall read:

- (e) If construction starts in accordance with paragraph 7(a)-7(d) above, said construction must comply with the minimum standards for fire prevention, fire protection, and building construction safety in effect at the time of the initial submission.

Authority: T. C. A. § 68-120-101(d).

Rule 0780-02-03-.03 Requirements is amended by deleting the text of paragraph (3) in its entirety.

Authority: T. C. A. § 68-120-101(d).

Rule 0780-02-03-.04 Fees 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 fee for review of plans and specifications for construction shall be as specified in the following table:

Total Project Construction Cost	Fee
\$0.00 to \$1,000,000.00	\$2.50 per thousand or fraction thereof (\$250.00 minimum)
\$1,000,000.01 or more	\$2,500.00 for the first \$1,000,000.00 plus \$2.00 for each additional thousand or fraction thereof.

Such fee shall be payable in full at the time of initial submission of plans and specifications.

- (a) If a State building or educational occupancy is also reviewed for compliance with building construction safety standards by a local government which has obtained the exemption authorized by Tenn. Code Ann. §68-120-101(b)(2), the fee for review under this chapter shall be reduced by fifty percent (50%), but the fee shall not be less than two hundred dollars (\$200.00). Review fees for plans being submitted under Chapter 0780-02-03-.02(8) shall not be further reduced.
- (b) If plans and specifications must be resubmitted because their approval has become invalid under paragraph (3) of rule 0780-02-03-.05, the fee established in this rule will be imposed.
- (2) (a) The fee for obtaining a letter stating that plans are not required to be reviewed (a "no review letter") shall be one hundred dollars (\$100.00).
- (b) The fee shall be applied to the fee for review of plans and specifications for construction if it is determined that plans are required to be reviewed.
- (3) The Division may require appropriate documentation of costs (such as contractors' bids or invoice) if:
 - (a) in the Division's opinion, the construction cost of a project has been underestimated in the certification submitted pursuant to rule 0780-02-03-.03(3) based on the latest available Building Valuation Data published by the International Code Council (using the 0.88 Regional Cost Modifier for Tennessee); or
 - (b) the scope of a project is substantially revised after the initial plans submission.

After initial review, if such documentation warrants an additional plans review charge it shall be computed, assessed, and paid promptly.

Authority: T. C. A. § 68-120-101(d).

Paragraph (6) of rule 0780-02-03-.05 Approval of Plans 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:

- (6) No approval of, or failure to review, plans, and specifications by the Division shall relieve the owner, developer, contractor, or designing architect or engineer of their respective responsibilities for compliance with applicable codes respecting fire prevention, fire protection, and building construction.

Authority: T. C. A. § 68-120-101(d).

Paragraph (7) of rule 0780-02-03-.05 Approval of Plans 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:

- (7) Any temporary factory manufactured structure which is not designed and constructed in accordance with the Tennessee Modular Building Act (T.C.A. §§ 68-120-301 et seq. and chapter 0780-2-13) shall have an independent third party

inspection label permanently affixed to the unit. For purposes of this paragraph, temporary means placed on a site for less than twelve (12) months.

Authority: T. C. A. § 68-120-101(d).

Rule 0780-02-03-.05 Approval of Plans is amended by adding new paragraph (8) so that, as amended, the new paragraph shall read:

- (8) Any factory manufactured structure which has been designed and constructed in accordance with the Tennessee Modular Building Act (T.C.A. §§ 68-120-301 et seq and chapter 0780-2-13) shall be exempt from all provisions of this Chapter.

Authority: T. C. A. § 68-120-101(d).

New Rules Table of Contents

0780-02-03-.11 Dispute Resolution

0780-02-03-.12 Grandfather Provision for Review of Plans

0780-02-03-.11 Dispute Resolution.

- (1) Disputes that arise during the plans review process shall be resolved as follows:
 - (a) When a dispute as to the interpretation or applicability of a code provision arises between the owner or designer of a project and the plans reviewer, the dispute shall be submitted to the Plans Review Supervisor for resolution.
 - (b) If the owner or designer disagrees with the decision of the Plans Review Supervisor, the dispute shall be submitted to the Director of Codes Enforcement for resolution.
 - (c) If the owner or designer disagrees with the decision of the Director of Codes Enforcement, the dispute shall be submitted to the Assistant Commissioner for Fire Prevention for resolution.
 - (d) If the owner or designer disagrees with the decision of the Assistant Commissioner for Fire Prevention, the dispute shall be submitted to the Commissioner of Commerce and Insurance or the Commissioner's designee for resolution.
 - (e) If the owner or designer disagrees with the decision of the Commissioner of Commerce and Insurance or the Commissioner's designee, the owner or designer may elect to have the dispute submitted to a panel of outside parties for resolution.
 - (1) The panel of outside parties shall consist of three (3) individuals, one (1) selected by the owner or designer, one (1) selected by the Commissioner of Commerce and Insurance and one (1) selected by the Executive Director of the Board of Architectural and Engineering Examiners.

- (2) The members of the panel shall have a background in architecture, engineering, plans review, construction or building/codes inspections. Panel members shall be compensated at a rate of one hundred fifty dollars (\$150.00) per day.
 - (3) The owner or designer seeking to have the dispute submitted to the panel of outside parties shall submit an application for appeal on a form provided by the Division along with an application fee of one hundred dollars (\$100.00). The owner or designer shall pay a fee of four hundred fifty dollars (\$450.00) for each day of the appeal to pay the per diem of the panel members.
- (f) At any point during this process, the parties may agree to submit the dispute to the publisher of the code section at issue for an opinion.
- (2) Disputes that arise during the inspection process shall be resolved as follows:
- (a) When a dispute arises as to the interpretation or applicability of a code provision between the owner, designer or contractor on a project and the Deputy State Fire Marshal inspecting the project, and the project is being constructed in accordance with plans and specifications approved by the Division, the Deputy State Fire Marshal shall consult with the Plans Reviewer who approved the plans and specifications for resolution. If the owner, designer or contractor disagrees with the decision of the Plans Reviewer, the dispute shall be submitted to the Chief Deputy State Fire Marshal.
 - (b) If the owner, designer or contractor disagrees with the decision of the Chief Deputy State Fire Marshal, the dispute shall be submitted to the Director of Codes Enforcement for resolution.
 - (c) If the owner, designer or contractor disagrees with the decision of the Director of Codes Enforcement, the dispute shall be submitted to the Assistant Commissioner for Fire Prevention for resolution.
 - (d) If the owner, designer or contractor disagrees with the decision of the Assistant Commissioner for Fire Prevention, the dispute shall be submitted to the Commissioner of Commerce and Insurance or the Commissioner's designee for resolution.
 - (e) If the owner or designer disagrees with the decision of the Commissioner of Commerce and Insurance or the Commissioner's designee, the owner or designer may elect to have the dispute submitted to a panel of outside parties for resolution.
 - (1) The panel of outside parties shall consist of three (3) individuals, one (1) selected by the owner or designer, one (1) selected by the Commissioner of Commerce and Insurance and one (1) selected by the Executive Director of the Board of Architectural and Engineering Examiners.
 - (2) The members of the panel shall have a background in architecture, engineering, plans review, construction or building/codes inspections. Panel members shall be compensated at a rate of one hundred fifty dollars (\$150.00) per day.

- (3) The owner or designer seeking to have the dispute submitted to the panel of outside parties shall submit an application for appeal on a form provided by the Division along with an application fee of one hundred dollars (\$100.00). The owner or designer shall pay a fee of four hundred fifty dollars (\$450.00) for each day of the appeal to pay the per diem of the panel members.
- (f) At any point during this process, the parties may agree to submit the dispute to the publisher of the code section at issue for an opinion.
- (3) The entire dispute resolution process set forth in paragraphs (1) and (2) above shall be completed as quickly as possible, but no more than thirty (30) calendar days from the date that the dispute is first submitted for resolution, unless the dispute is submitted to the code publisher for an opinion.
- (4) If there are any fees charges by the code publisher for rendering its opinion, those fees shall be paid by the owner of the project before final approval of the subject plans and specifications will be issued by the Division.
- (5) Any appeal of the dispute beyond the Commissioner of Commerce and Insurance shall be submitted in accordance with the provisions of the Uniform Administrative Procedures Act, compiled at T.C.A. § 4-5-301 et seq., pertaining to Contested Case Hearings.

Authority: Authority: T. C. A. § 68-120-401.

0780-02-03-.12 Grandfather Provision for Review of Plans.

At the submitter's request, plans submitted within one hundred twenty (120) days after the effective date of newly adopted building, fire and life safety codes may be reviewed under the codes that were in effect on the day immediately effective date of the newly adopted codes.

Authority: Authority: T. C. A. § 68-120-101(a) and (d).

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 2nd day of October, 2008 and will become effective on the 16th day of December, 2008. (FS 10-05-08; DBID 3482-3483)

Economic Impact Statement:

1. Types of small businesses directly affected:

All small design and design/construction firms doing business within the State of Tennessee and small businesses building new, adding on to or remodeling existing facilities in Tennessee that meet the size requirements will be affected by these rules.

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, although businesses will eventually be required to purchase updated fire code materials.

3. Probable effect on small businesses:

There may be some additional construction costs when building new, adding on to or remodeling existing facilities that meet the size requirements for plans review in order to meet the requirements of the new codes. These costs may be offset by reduced insurance rates and will result in greater safety to the citizens of Tennessee. Increased fees for the review of construction plans and specifications will be imposed upon any business submitting plans as required by law. These increased fees were calculated by analyzing similar fees currently charged in neighboring states and major local jurisdictions within Tennessee and taking into account the costs incurred by the Division to provide the service of plans and specification review. The new fees proposed reflect an approximate 25% increase over the fees established in 2002. The dispute resolution provisions will provide a less costly means for resolving disputes that may arise during the plans review or the inspection process.

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

The proposed changes and additions to the existing rules are minimally burdensome/intrusive to small businesses. Any cost to small businesses will be incurred only when building new, adding on to or remodeling existing facilities that meet the size requirements for plans review. 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.

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 fire safety and plans review.