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# Notice of Rulemaking Hearing

*Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.*

| | |
|---|---|
| **Agency/Board/Commission:** | Department of Commerce and Insurance |
| **Division:** | Division of Fire Prevention |
| **Contact Person:** | Patrick W. Merkel |
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*Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:*

| | |
|---|---|
| **ADA Contact:** | Don Coleman |
| **Address:** | 500 James Robertson Parkway,<br>Davy Crockett Tower, 5th Floor<br>Nashville, TN 37243 |
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**Hearing Location(s)** (for additional locations, copy and paste table)

| | | | |
|---|---|---|---|
| Address 1: | 500 James Robertson Parkway | | |
| Address 2: | Room 160 | | |
| City: | Nashville | | |
| Zip: | 37209 | | |
| Hearing Date : | *(02/25/09)* | | |
| Hearing Time: | 9:00 a.m. | X CST | EST |

**Additional Hearing Information:**

**Revision Type (check all that apply):**

X Amendment
___ New
___ Repeal

**Rule(s)** (**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** |
|---|---|
| 0780-2-13 | Modular Building Units |
| **Rule Number** | **Rule Title** |
| 0780-2-13-.01 | Definitions |
| 0780-2-13-.02 | Standards |
| 0780-2-13-.03 | Licenses |
| 0780-2-13-.04 | Approval of Design Review Agencies |
| 0780-2-13-.06 | Approval of Construction Inspection Agencies |
| 0780-2-13-.07 | Responsibilities of Approved Construction Inspection Agencies |
| 0780-2-13-.09 | Building Systems and Compliance Assurance Programs |
| 0780-2-13-.11 | Labels |
| 0780-2-13-.16 | Department Functions |
| 0780-2-13-.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)

SUBSTANCE OF PROPOSED RULE

CHAPTER 0780-2-13
MODULAR BUILDING UNITS
Amendments

Paragraph (1) of rule 0780-2-13-.01 Definitions is amended by adding the following language as new subparagraphs (e) and (j) and relettering the subparagraphs as necessary, so that the new subparagraphs shall read:

(e) "Commissioner" means the commissioner of commerce and insurance.

(j) "Department" means the department of commerce and insurance.

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

Rule 0780-2-13-.02 Standards is amended by deleting the text of the rule in its entirety and substituting it with the following language, so that the amended 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) ICC 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, 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.

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

Rule 0780-2-13-.03 Licenses is amended by deleting the text of the rule in its entirety and substituting it with the following language, so that the amended 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 ..... five hundred thousand dollars ($500,000.00)

Dealer ..... one hundred thousand dollars ($100,000.00)

Installer ..... fifty thousand dollars ($50,000.00)

(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 0780-2-13-.04 Approval of Design Review Agencies is amended by adding the following text at the end of the existing language as paragraphs (7), (8), (9) and (10), 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 his or her 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.

(10) A separate approval shall be required for each place of business operated by a design review agency under this Chapter.

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

Rule 0780-2-13-.06 Approval of Construction Inspection Agencies is amended by adding the following text at the end of the existing language as paragraphs (7), (8), (9) and (10), 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 his or her 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.

(10) A separate approval shall be required for each place of business operated by a construction inspection agency under this Chapter.

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

Subparagraph (d) of paragraph (1) of rule 0780-2-13-.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 the amended 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 0780-2-13-.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 the amended 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 0780-2-13-.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 the amended 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;

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 0780-2-13-.09 Building Systems and Compliance Assurance Programs is amended by deleting the text of the paragraph in its entirety and substituting it with the following language, so that the amended 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 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 0780-2-13-.09 Building Systems and Compliance Assurance Programs is amended by deleting the text of the paragraph in its entirety and substituting it with the following language, so that the amended 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 fire alarm systems, including 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.*

Paragraph (4) of rule 0780-2-13-.09 Building Systems and Compliance Assurance Programs is amended by deleting the text of the paragraph in its entirety and substituting it with the following language, so that the amended paragraph shall read:

(4) Review and Approval.

(a) The approved design review agency shall evaluate the building system and compliance assurance program documentation to determine compliance with the standards. Such agency may require tests to determine whether a building system or compliance assurance program meets the standards if that determination cannot be made from evaluation of plans, specifications, and documentation alone.

(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 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 eighty five dollars ($185.00);

(ii) an internet convenience fee of fifteen dollars (15.00); and

(iii) 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.

(c) All modular building unit model plans must be filed with the Department prior to commencement of construction of the modular building unit. The construction inspection agency must not inspect, nor allow a Tennessee modular label to be affixed to, any Tennessee modular building unit for which plans have not been received and filed with the Department.

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

Subparagraph (b) of paragraph (6) of rule 0780-2-13-.09 Building Systems and Compliance Assurance Programs is amended by deleting the text of the paragraph in its entirety and substituting it with the following language, so that the amended 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 0780-2-13-.11 Labels is amended by deleting the text of the paragraph in its entirety and substituting it with the following language, so that the amended subparagraph shall read:

(d) Requests for labels shall be submitted electronically and shall be accompanied by an internet convenience fee of fifteen dollars ($15.00). Label fees shall be submitted in a method acceptable to the Department, which may include by cash, check, money order or electronically and the department may charge 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. §§ 8-21-107, 68-102-113 and 68-126-305.*

Subparagraph (a) of paragraph (1) of rule 0780-2-13-.16 Department Functions is amended by deleting the text of the paragraph in its entirety and substituting it with the following language, so that the amended subparagraph shall read:

(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 0780-2-13-.16 Department Functions is amended by deleting the text of the paragraph in its entirety and substituting it with the following language, so that the amended 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 0780-2-13-.17 Disciplinary Proceedings is amended by deleting the text of the rule in its entirety and substituting it with the following language, so that the amended 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 an 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 Commissioner 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;

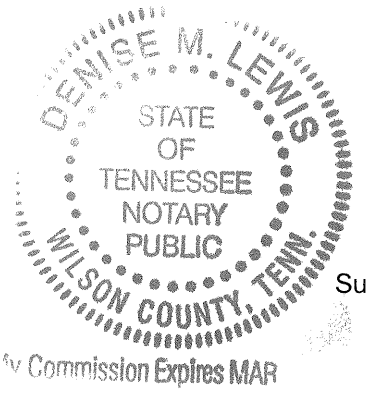
(iv) the economic benefits gained by the violator as a result of non-compliance; and

(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 the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.




Date: 12/31/08

Signature:

Name of Officer: Patrick W. Merkel

Title of Officer: Chief Counsel for Fire Prevention and Law Enforcement

Subscribed and sworn to before me on: 12/31/08

Notary Public Signature: Denise M Lewis

My commission expires on: 3/5/12

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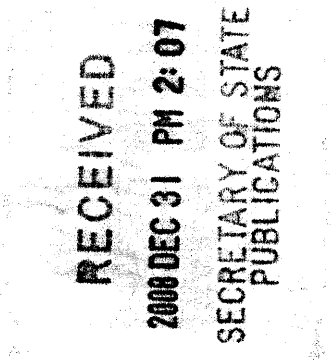
Filed with the Department of State on: 12/31/08

Riley C. Darnell
Secretary of State