

Notice
of
Rulemaking Hearing

Department of Commerce and Insurance - 0780
Division of Fire Prevention

There will be a hearing before the Commissioner of Commerce and Insurance or her designee to consider the promulgation of rules pursuant to T.C.A. §§ 68-102-113 and 68-104-214. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204, and will take place in Room 160 on the first floor of the Davy Crockett Tower, located at 500 James Robertson Parkway in Nashville, Tennessee at 9 a.m. (Central Time) on the 20th day of March, 2007.

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 of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), 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 Emmett Turner, Assistant Commissioner for the Division of Fire Prevention at 500 James Robertson Parkway, Davy Crockett Tower, 3rd Floor, Nashville, Tennessee 37243, telephone (615) 741-2981.

Substance of Proposed Rules

Chapter 0780-02-21
Fireworks

New Rules

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0780-02-21-.01 Definitions

- (1) "Registrant" means any person who is licensed as an exhibitor or certified as an outdoor display operator, proximate pyrotechnic operator, or flame effect operator.
- (2) "State fire marshal" means the commissioner of the department of commerce and insurance.

Authority: T.C.A. § 68-102-113.

0780-02-21-.02 Adoption by Reference.

- (1) Unless otherwise provided by applicable law or the provisions of this chapter, the required minimum standards for the use, exhibition, or display of fireworks, pyrotechnics, or flame effects not classified as D.O.T. Class C common fireworks (also known as 1.4G fireworks) in the State of Tennessee shall be those in T.C.A. Title 68, Chapter 104, et seq., and those in the following publications:
 - (a) Standard for Flame Effects Before an Audience (NFPA 160-2006), published by the National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02269;
 - (b) Code for Fireworks Display (NFPA 1123-2006), published by the NFPA;
 - (c) Code for the Manufacture, Transportation, Storage, and Retail Sale of Fireworks and Pyrotechnic Articles (NFPA 1124-2006), published by the NFPA;
 - (d) Standards for the Use of Pyrotechnics Before a Proximate Audience (NFPA 1126-2006), published by the NFPA;

Authority: T. C. A. §§ 68-102-113 and 68-104-214.

0780-02-21-.03 Licensure of Exhibitors; Certification of Operators.

- (1) Requirements for licensure as an exhibitor are those at T.C.A. §§ 68-104-102 and 68-104-204.
- (2) An applicant for certification as an outdoor fireworks display operator shall:
 - (a) Submit a certification fee of one hundred dollars (\$100) (of which twenty (\$20) is non-refundable) with the application form prescribed by the state fire marshal;
 - (b) Pass the examination prescribed by the state fire marshal;
 - (c) Provide proof satisfactory to the state fire marshal of having worked under competent supervision on at least three (3) outdoor fireworks displays in the three (3) years immediately preceding the application.
- (3) An applicant for certification as a proximate pyrotechnic display operator shall:
 - (a) Submit a certification fee of one hundred dollars (\$100) (of which twenty (\$20) is non-refundable) with the application form prescribed by the state fire marshal;
 - (b) Pass the examination prescribed by the state fire marshal;
 - (c) Provide proof satisfactory to the state fire marshal of having worked under competent supervision on at least three (3) proximate pyrotechnic displays in the three (3) years immediately preceding the application.
- (4) An applicant for certification as a flame effect display operator shall:

- (a) Submit a certification fee of one hundred dollars (\$100) (of which twenty (\$20) is non-refundable) with the application form prescribed by the state fire marshal;
 - (b) Pass the examination prescribed by the state fire marshal;
 - (c) Provide proof satisfactory to the state fire marshal of having worked under competent supervision on at least three (3) flame effect displays in the three (3) years immediately preceding the application.
- (5) If an applicant applies for more than one certification, the applicant may take the examination for any or all certifications and pay a certification fee of two hundred dollars (\$200).
- (6) Any application that remains pending for twelve (12) months will expire. Refundable fees will be refunded if a written request is made to the state fire marshal within six (6) months of the expiration of the application.

Authority: T. C. A. §§ 68-102-113, 68-104-102, 68-104-204, 68-104-208, and 68-104-214.

0780-02-21-.04 Renewals.

- (1) Renewal notices will be sent out by the state fire marshal sixty (60) days prior to expiration of each license or certification.
- (2) A certified outdoor fireworks display operator, proximate pyrotechnic display operator, or a flame effect operator with an unexpired certificate may apply for a new certificate at any time before the certificate expires. A certificate holder whose certificate has been expired for ninety (90) or fewer days may renew the certificate and have it retroactive to the date the old certificate expired by applying and paying a fee equal to one and one-half (1 ½) times the normal fee.
- (3) The renewal fee for a single certification is one hundred dollars (\$100). The renewal fee for multiple certifications is two hundred dollars (\$200).
- (4) Proof of satisfaction of continuing education requirements must be provided as a prerequisite to renewal.

Authority: T. C. A. §§ 68-102-113 and 68-104-214.

0780-02-21-.05 Training; Continuing Education.

- (1) A continuing education course must be approved by the state fire marshal before the registrant will be granted credit for the course.
- (2) The registrant shall provide verification to the state fire marshal of having obtained the continuing education credits required by § 68-104-208(d). Verification consists of a form certifying attendance at the course and the number of continuing education credits obtained at the course and signed by both the registrant and the course instructor.
- (3) The registrant shall submit to the state fire marshal the registrant's verification form after completing the course and prior to his or her renewal. 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.

- (4))In order to obtain approval to provide course instruction, the course provider shall submit to the state fire marshal 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.
- (5) Credit may be granted, in the discretion of the state fire marshal, for the instruction of continuing education courses.
- (6) 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.
- (7) The state fire marshal may conduct random audits of registrants and continuing education courses to ensure compliance with this rule. Each registrant is responsible for maintaining sufficient records which may be used to support claimed continuing education credits.
- (8) The state fire marshal may require completion of specific continuing education classes in order to renew registration.
- (9) Registrants will not receive credit for taking a course more than once each renewal cycle.

Authority: T. C. A. §§ 68-102-113, 68-104-208(d), and 68-104-214.

0780-02-21-.06 Examinations.

Each examination can be taken a second time immediately following the first attempt if necessary. If a passing score is not achieved after the second attempt, then the applicant may only take the examination once every thirty (30) days thereafter.

Authority: T. C. A. §§ 68-102-113, 68-104-208, and 68-104-214.

0780-02-21-.07 Permits.

- (1) Retailers and seasonal retailers will be required to obtain a permit for each retail sales location.
- (2) A person engaged in more than one (1) of the activities in T.C.A. § 68-104-102(d)(1) shall pay only one (1) fee based upon the classification requiring the higher fee, if the application for each classification is made at the same time. Multiple applications will require payment of a fee for each classification.

Authority: T. C. A. §§ 68-102-113 and 68-104-102(d)(2).

The notice of rulemaking hearing set out herein was properly filed in the Department of State on this the 31st day of January, 2007. (FS 01-57-07, DBID 575)