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Emergency Rule Filing Form

Emergency rules are effective from date of filing, unless otherwise stated in the rule, for a period of up to 180 days.

Agency/Board/Commission: Department of Commerce and Insurance
Division: Division of Fire Prevention
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Revision Type (check all that apply):

☒ Amendment
☐ New
☐ Repeal

Statement of Necessity:

The Department of Commerce and Insurance, Division of Fire Prevention, commonly referred to as the State Fire Marshal's Office, recognizes that active shooter and armed intruder incidents in educational occupancies, schools, colleges and universities present an immediate danger to the public health, safety and welfare to citizens of Tennessee. The State Fire Marshal's Office considers the safety of students and teachers of paramount importance and is concerned that certain provisions in the currently adopted 2012 edition of the National Fire Protection Association (NFPA) 101, commonly referred to as the Life Safety Code, in Tenn. Comp. R. & Regs. 0780-02-02-.01(1), may restrict the installation of some safety features which may be utilized to protect against such dangers. NFPA 101 Life Safety Code addresses both new and existing buildings and is the primary code standard which protects occupants of buildings from the dangers of fire, including smoke, heat and toxic gases. The Life Safety Code also addresses situations not specifically related to fire, including crowd safety. The State Fire Marshal's Office has reviewed the 2018 edition of NFPA 101, to determine that this more recently published edition provides greater flexibility regarding the implementation of security devices and features in educational occupancies. The 2018 edition also adds provisions related to unwanted entry in educational and business occupancies. These provisions for new and existing schools allow flexibility while maintaining proven safety standards established in previously adopted editions of the Life Safety Code. Therefore, the State Fire Marshal's Office proposes adopting the 2018 edition of NFPA 101 Life Safety Code by emergency rule in accordance with T.C.A. § 4-5-208(a)(1), to allow educational occupancies the option of installing additional security features before the 2018-2019 school year begins; and subsequently, the State Fire Marshal's Office intends to initiate the rulemaking process, pursuant to T.C.A. §§ 4-5-203 and 4-5-206, to adopt the 2018 edition of NFPA 101.

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0780-02-02	Codes and Standards
Rule Number	Rule Title
0780-02-02-.01	Adoption By Reference
0780-02-02-.04	Conflicts

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to

http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Amendment
Chapter 0780-02-02
Codes and Standards

Subparagraph (i) of paragraph (1) of rule 0780-02-02-.01 Adoption by Reference shall be amended by deleting the existing subparagraph in its entirety and substituting the following, so that the new subparagraph (i) shall read as follows:

- (i) For state buildings, educational occupancies and any other occupancy requiring an inspection by the state fire marshal for initial licensure, NFPA 101 Life Safety Code, 2012 edition, published by the National Fire Protection Association (NFPA); except that:
 - 1. For classrooms in existing and new educational occupancies, as defined by Tenn. Comp. R. & Regs. 0780-02-03-.01(d), 15.2.2.2.4 excluding (1): Classroom Door Locking to Prevent Unwanted Entry, NFPA 101 Life Safety Code, 2018 edition, published by the NFPA; or
 - 2. For classrooms in existing and new colleges and university instructional buildings, 39.2.2.2.2 excluding (1): Classroom Door Locking to Prevent Unwanted Entry, NFPA 101 Life Safety Code, 2018 edition, published by the NFPA.

Authority: T.C.A. §§ 68-102-113 and 68-120-101.

Paragraph (1) of rule 0780-02-02-.04 Conflicts shall be amended by deleting the existing paragraph in its entirety and substituting the following, so that the new paragraph (1) shall read as follows:

- (1) In the event of a conflict or inconsistency between the codes adopted by reference in Tenn. Comp. R. & Regs. 0780-02-02-.01:
 - (a) the provisions of the International Building Code (IBC) shall prevail if such conflict or inconsistency relates to building height, building area restrictions or construction type;
 - (b) the provisions of the Tennessee Public Building Accessibility Act, T.C.A. § 68-120-201, et seq., shall prevail if such conflict or inconsistency relates to accessibility;
 - (c) the provisions of NFPA 101 Life Safety Code, 2018 edition, shall prevail if such conflict or inconsistency relates to classrooms in existing and new educational occupancies, colleges, and university instructional buildings; and
 - (d) the more stringent provision shall prevail in all other cases.

Authority: T.C.A. §§ 68-102-113, 68-120-101 and 68-120-106.

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.



Date: 5/11/18

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner of Commerce and Insurance

Subscribed and sworn to before me on: 5/11/18

Notary Public Signature: Denise M. Lewis

My commission expires on: 1/15/20

Agency/Board/Commission: The Department of Commerce and Insurance

Rule Chapter Number(s): 0780-02-02

All emergency 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.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
5/16/18
Date

Department of State Use Only

Filed with the Department of State on: 6/1/18

Effective for: 180 *days

Effective through: 11/28/18

* Emergency rule(s) may be effective for up to 180 days from the date of filing.

Tre Hargett
Tre Hargett
Secretary of State

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PUBLICATIONS

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The emergency rule will impact local governments.

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 rule adopts the most current published version of the 2018 National Fire Protection Association (NFPA) 101 (Life Safety Code) to allow more flexibility in the fire code as it relates to classroom door locking to prevent unwanted entry for educational occupancies, colleges and university instructional buildings. The Department is not adopting the requirement that the locking means be capable of being engaged without opening the door to ensure that schools will not be required to retrofit existing door hardware.

- (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;

T.C.A. §§ 68-102-113 and 68-120-101.

- (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;

Students, teachers, school superintendents, municipalities and counties that operate schools, local fire inspectors have urged the Department of Commerce and Insurance to adopt codes that allow greater flexibility as the fire codes relate to school security.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

N/A

- (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;

The rule will not require local government to expend any funds. Any funds a local government will expend as a result of this rule will be entirely voluntary based on safety concerns identified at the local level.

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

Christopher Bainbridge, Director of Codes Enforcement, and Mary Beth Gribble, Director of Programs and Policy

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Christopher Bainbridge, Director of Codes Enforcement; Mary Beth Gribble, Director of Programs and Policy; Leigh Ferguson, Chief Counsel of Fire Prevention and Law Enforcement

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

The Department of Commerce and Insurance, Division of Fire Prevention, 500 James Robertson Parkway, Nashville, TN 37243. Christopher Bainbridge, Director of Codes Enforcement, christopher.bainbridge@tn.gov, 615-741-6246; Mary Beth Gribble, Director of Programs and Policy, marybeth.gribble@tn.gov, 615-532-3272; Leigh Ferguson, Chief Counsel of Fire Prevention and Law Enforcement, leigh.j.ferguson@tn.gov, 615-360-4435.

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

The Department of Commerce and Insurance has also filed a Notice of Rulemaking Hearing to make this rule permanent.

**RULES
OF
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF FIRE PREVENTION**

**CHAPTER 0780-02-02
CODES AND STANDARDS**

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0780-02-02-.01 ADOPTION BY REFERENCE.

- (1) Unless otherwise provided by applicable law or the provisions of this chapter, the required minimum standards for fire prevention, fire protection, and building construction safety in the State of Tennessee shall be those prescribed in the following publications:
- (a) International Building Code (IBC), 2012 edition, published by the International Code Council (ICC), except for:
 - 1. Chapter 11 Accessibility; and,
 - 2. Chapter 34, Section 3411 Accessibility For Existing Buildings;
 - (b) The International Fuel Gas Code (IFGC), 2012 edition, published by the International Code Council (ICC);
 - (c) The International Mechanical Code (IMC), 2012 edition, published by the International Code Council (ICC);
 - (d) The International Plumbing Code (IPC), 2012 edition, published by the International Code Council (ICC);
 - (e) The International Property Maintenance Code (IPMC), 2012 edition, published by the International Code Council (ICC);
 - (f) The International Fire Code (IFC), 2012 edition, published by the International Code Council (ICC);
 - (g) The International Energy Conservation Code (IECC), 2012 edition, published by the International Code Council (ICC), except that the provisions of the International Energy Conservation Code, 2006 edition, shall apply to the following occupancy classifications as defined by the International Building Code (IBC), 2012 edition:
 - 1. Moderate-hazard factory industrial, Group F-1;
 - 2. Low-hazard factory industrial, Group F-2;
 - 3. Moderate-hazard storage, Group S-1; and,
 - 4. Low-hazard storage, Group S-2;

(Rule 0780-02-02, continued)

- (h) The International Existing Building Code (IEBC), 2012 edition, published by the International Code Council (ICC);
- (i) For state buildings, educational occupancies and any other occupancy requiring an inspection by the state fire marshal for initial licensure, NFPA 101 Life Safety Code, 2012 edition, published by the National Fire Protection Association (NFPA); and except that:
 - 1. For classrooms in existing and new educational occupancies, as defined by Tenn. Comp. R. & Regs. 0780-02-03-.01(d), 15.2.2.2.4 excluding (1): Classroom Door Locking to Prevent Unwanted Entry, NFPA 101 Life Safety Code, 2018 edition, published by the NFPA; or
 - 2. For classrooms in existing and new colleges and university instructional buildings, 39.2.2.2.2 excluding (1): Classroom Door Locking to Prevent Unwanted Entry, NFPA 101 Life Safety Code, 2018 edition, published by the NFPA.
- (j) No provision of the preceding cited publications shall be adopted that conflicts with:
 - 1. The installation and service standards of portable fire extinguishers and fixed fire extinguisher systems in Tenn. Comp. R. & Regs. 0780-02-14-.02; and,
 - 2. The standards for engaging in the liquefied petroleum gas business in Tenn. Comp. R. & Regs. 0780-02-17-.02.
- (2) Paragraph (1) of 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 inconsistent with the statute or rules.

Authority: T.C.A. §§ 68-102-113, and 68-120-101, ~~68-120-101(a) and (e), 68-102-113, and 68-102-113(a) and (e).~~ **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed August 17, 1976; effective September 16, 1976. Repeal and new rule filed July 27, 1982; effective August 26, 1982. Amendment filed October 11, 1985; effective November 10, 1985. Amendment filed July 9, 1990; effective August 23, 1990. Amendment filed March 13, 1996; effective May 27, 1996. Amendment filed October 14, 1997; effective December 28, 1997. Amendment filed June 12, 2001; effective August 26, 2001. Amendment filed March 19, 2004; effective June 2, 2004. Amendment filed November 16, 2007; withdrawn December 28, 2007. Emergency rule filed January 25, 2008; effective through July 8, 2008. Emergency rule filed July 8, 2008; effective through December 20, 2008. Amendment filed June 18, 2008; effective September 1, 2008. Amendments filed October 2, 2008; effective December 16, 2008. Amendments filed March 29, 2010; effective June 27, 2010. Repeal and amendments filed May 6, 2016; effective August 4, 2016.

0780-02-02-.02 REPEALED.

Authority: T.C.A. §§ 53-2413, 68-102-113, and 68-120-101, and Chapter 857, Public Acts of 1982. **Administrative History:** Original rule filed July 27, 1982; effective August 26, 1982. Repeal and amendments filed May 6, 2016; effective August 4, 2016.

0780-02-02-.03 RETROACTIVE ENFORCEMENT. Any existing building which conformed to the standards legally effective at the time of its construction shall not be subject to the standards adopted by reference in Tenn. Comp. R. & Regs. 0780-02-02-.01, unless the nonconformity of the building to such standards poses a serious life safety hazard. However, any construction as defined in Tenn. Comp. R. & Regs. 0780-02-03-.01 undertaken after the effective date of this chapter shall be in compliance with the

(Rule 0780-02-02, continued)

standards adopted by reference in Tenn. Comp. R. & Regs. 0780-02-02-.01.

Authority: T.C.A. §§ 53-2413, 68-102-113, 68-120-101, 68-120-102, and Chapter 857, Public Acts of 1982. **Administrative History:** Original rule filed July 27, 1982; effective August 26, 1982. Amendment filed June 12, 2001; effective August 26, 2001. Repeal and amendments filed May 6, 2016; effective August 4, 2016.

0780-02-02-.04 CONFLICTS.

- (1) In the event of a conflict or inconsistency between the codes adopted by reference in Tenn. Comp. R. & Regs. 0780-02-02-.01:
 - (a) the provisions of the International Building Code (IBC) shall prevail if such conflict or inconsistency relates to building height, building area restrictions or construction type;
 - (b) the provisions of the Tennessee Public Building Accessibility Act, T.C.A. § 68-120-201, et seq., shall prevail if such conflict or inconsistency relates to accessibility; and
 - (c) the provisions of NFPA 101 Life Safety Code, 2018 edition, shall prevail if such conflict or inconsistency relates to classrooms in existing and new educational occupancies, colleges, and university instructional buildings; and
- (ed) the more stringent provision shall prevail in all other cases.
- (2) In the event of a conflict or inconsistency between either standard adopted by reference in Tenn. Comp. R. & Regs. 0780-02-02-.01 and 0780-02-01 (Electrical Installations), the provisions of Tenn. Comp. R. & Regs. 0780-02-01 (Electrical Installations) shall prevail.
- (3) Nothing in this rule shall abrogate any right of appeal granted under T.C.A., Title 68, Chapters 102 and 120.

Authority: T.C.A. §§ 68-102-113, ~~68-102-113(a) and (e)~~, 68-120-101, ~~68-120-101(a)~~, and 68-120-106. **Administrative History:** Original rule filed July 27, 1982; effective August 26, 1982. Amendment filed November 14, 1983; effective December 14, 1983. Amendment filed July 9, 1990; effective August 23, 1990. Amendment filed October 14, 1997, effective December 28, 1997. Amendment filed March 19, 2004; effective June 2, 2004. Amendment filed November 16, 2007; withdrawn December 28, 2007. Amendment filed June 18, 2008; effective September 1, 2008. Amendment filed October 2, 2008; effective December 16, 2008. Repeal and amendments filed May 6, 2016; effective August 4, 2016.

0780-02-02-.05 LOCAL ORDINANCES. Except as provided in T.C.A. § 68-120-101, or otherwise approved in writing by the state fire marshal, no city, county, town, municipal corporation, metropolitan government, or political subdivision of the state of Tennessee shall adopt or enforce any ordinance prescribing less stringent standards of fire prevention, fire protection, or building construction safety than those established hereunder. A city, county, town, municipal corporation, metropolitan government, or political subdivision of the state of Tennessee that has adopted an edition of a building construction or fire safety standard within seven (7) years of the most current published edition shall be deemed to be in compliance with this chapter.

Authority: T.C.A. §§ 58-2413, 68-17-113, 68-18-101, 68-102-113, 68-120-101, 68-120-106, and Chapter 857, Public Acts of 1982. **Administrative History:** Original rule filed July 17, 1982; effective August 26, 1982. Amendment filed October 11, 1985; effective November 10, 1985. Repeal and amendments filed May 6, 2016; effective August 4, 2016.