

Emergency Rules

Department of Commerce and Insurance Division of Fire Prevention

Statement of Necessity Requiring Adoption of Emergency Rules

Pursuant to T.C.A §§ 4-5-208 and 68-102-113, I am promulgating emergency rules amending the building and fire codes and standards by which construction plans and specifications are reviewed by the Department of Commerce and Insurance's Division of Fire Prevention. Tenn. Code Ann. § 4-5-208 provides that an agency may adopt an emergency rule if the agency finds that an immediate danger to the public health, safety or welfare exists and the nature of the danger is such that any other form of rulemaking would not adequately protect the public. The statute provides that an emergency rule may only be effective for a period of not longer than one hundred and sixty-five (165) days. The statute further provides that an agency shall not adopt the same emergency rule within one (1) calendar year from its adoption, unless the agency clearly establishes that it could not reasonably be foreseen during the initial one hundred and sixty-five day (165) period that such an emergency would continue or would likely recur during the next nine (9) months.

Emergency rules are necessary to protect the safety of buildings, both public and private, that are currently under construction. Due to a procedural deficiency, rulemaking hearing rules setting forth new building and fire standards were withdrawn on December 28, 2007. In response to this situation, the Department of Commerce and Insurance's Division of Fire Prevention filed emergency rules on January 25, 2008 which expire July 8, 2008. The withdrawal of rulemaking hearing rules created a safety hazard because the withdrawal of the rulemaking hearing rules, less than 60 days before their effective date, created an uncertainty as to whether plans drawn relying on the withdrawn rules can be reviewed for statutory compliance under the pending codes by the Division of Fire Prevention. This uncertainty will interfere with the plans review and construction of both public and private buildings, resulting in costly delays for private citizens, as well as for the state and local governments. It is also possible that this uncertainty will result in a failure to submit plans for review and buildings will not comply with any minimum standards, thus endangering the public.

The Department of Commerce and Insurance's Division of Fire Prevention properly filed a notice of rulemaking hearing to adopt an updated building code on January 25, 2008 which was published in the February 2008 issue of the Tennessee Administrative Register in accordance with the provisions of Tenn. Code Ann. § 4-5-203. A public hearing was held March 19, 2008. The rulemaking hearing rules were filed with the Secretary of State on June 19 and they will become effective September 1, 2008.

Because of the great public interest in the adoption of an updated fire code and my desire to make sure the proposed standard provided the greatest safety to the citizens of Tennessee, the Department of Commerce and Insurance's Division of Fire Prevention held a pre-notice hearing on the adoption of a new fire code on March 25, 2008. The Department of Commerce and Insurance's Division of Fire Prevention properly filed a notice of rulemaking hearing on May 30, 2008. A public hearing will be held July 30, 2008.

The current emergency rules expire prior to the effective date of the permanent rules adopting an updated building code and prior to the promulgation of a new fire code creating an uncertainty as to whether plans drawn relying on the withdrawn rules and the expiring emergency rules can be reviewed for statutory compliance under the pending codes by the Division of Fire Prevention. The Department attempted to promulgate permanent rules to become effective prior to the expiration of the emergency rules; however, the great level of interest in these proposed standards which resulted in the extended period of time to promulgate permanent rules could not have been reasonably foreseen by the agency when it withdrew its rulemaking hearing rules and adopted emergency rules, and the agency is unable to deal with such an extended period of lapse in a manner that will protect the health, safety and welfare of the public.

I find that, given these findings, there is an emergency creating a danger to the public welfare such that the use of any other form of rulemaking authorized by the Administrative Procedures Act would not adequately protect the public.

For a copy of this notice of rulemaking hearing, contact Randy Safer, Director of Codes Enforcement for the State Fire Marshal's Office, Department of Commerce and Insurance at 500 James Robertson Parkway, Davy Crockett Tower, 3rd Floor, Nashville, Tennessee 37243, telephone (615) 741-7190.

Leslie A. Newman
Commissioner and State Fire Marshal
Tennessee Department of Commerce and Insurance

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Department of Commerce and Insurance
Division of Fire Prevention

Chapter 0780-02-02
Codes and Standards

Amendments

Paragraph (1) of rule 0780-02-02-.01 Adoption by Reference is amended by adding the text of subparagraphs (c) and (d) so that, as amended, the paragraph shall read:

- (c) Except for Chapter 11 pertaining to accessibility standards, ICC International Building Code, 2006 edition, including ICC International Mechanical Code, 2006 edition, published by the International Code Council, Inc., 500 New Jersey Avenue Northwest, 6th Floor, Washington, D.C. 20001.
- (d) ICC International Fire Code, 2006 edition, published by the International Code Council, Inc., 500 New Jersey Avenue Northwest, 6th Floor, Washington, D.C. 20001, and the 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) and (e), and 68-102-113(a).

The emergency rules set out herein were properly filed in the Department of State on the 8th day of July, 2008, and will become effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the day of 20th day of December, 2008. (FS 07-05-08; DBID 2915)