

Rules of the Tennessee Home Inspector Licensing Program
Chapter 0780-05-12 Home Inspectors
Rule 0780-05-12-.10 Standards of Practice

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Division of Publications**

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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

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Revision Type (check all that apply):

☒ Amendment ☐ Content based on previous emergency rule filed on _____
☐ New ☐ Content is identical to the emergency rule
☐ Repeal

Rule(s) (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 Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below.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
0780-05-12	Home Inspectors
Rule Number	Rule Title
0780-05-12-.10	Standards of Practice

Chapter 0780-05-12
Home Inspectors
Amendments

Rule 0780-05-12-.10 Standards of Practice, Paragraph (9) is amended by deleting subparagraph (a) part (8) in its entirety so that, as amended, Paragraph (9) subparagraph (a) of the Rule, as amended, shall read:

(9) Electrical Systems.

(a) The home inspector shall inspect:

1. Service entrance conductors;
2. Service equipment, ground equipment, main overcurrent device, and main distribution panels;
3. Amperage and voltage ratings of the service;
4. Branch circuit conductors, their overcurrent devices, and the compatibility of their ampacities and voltages;
5. The operation of a representative number of installed ceiling fans, lighting fixtures, switches and receptacles located inside the house, garage, and on the dwelling's exterior walls;
6. The polarity and grounding of all receptacles within six feet of interior plumbing fixtures, and all receptacles in the garage or carport, and on the exterior of inspected structures; and
7. The operation of ground fault circuit interrupters.

Authority: T.C.A. § 62-6-303.

Rule 0780-05-12-.10 Standards of Practice, Paragraph (9) is amended by deleting the text of subparagraph (d) in its entirety and substituting instead language so that, as amended, (9)(d) shall read:

(d) The home inspector shall report:

1. The presence or absence of smoke alarms;
2. The presence or absence of smoke alarms by location of the area and/or room;
3. If any area and/or room contain smoke alarms that appear to have been painted and/or obstructed by stickers or otherwise covered. If so, the home inspector shall recommend that any such smoke alarm be replaced with a device of the same type;
4. If any smoke alarms appear more than ten (10) years from the date of manufacture, and recommend that any such smoke alarm be replaced with a device of the same type;
5. If battery-powered smoke alarms appear more than ten (10) years from the date of manufacture, a request by the owner for that type of device shall be directed to the State Fire Marshal's Office; and
6. All requirements as set forth in paragraph (9)(d) except when access is obstructed,

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could damage the property, or when dangerous or adverse situations are suspected.

Authority: T.C.A. § 62-6-303.

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* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A	N/A	N/A	N/A	N/A	N/A

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Commerce and Insurance (board/commission/other authority) on 05/12/2023 (mm/dd/yyyy) and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 03/20/2023

Rulemaking Hearing(s) Conducted on: (add more dates). 05/12/2023

Date: Oct 30, 2023

Signature: 


Name of Officer: Alex Martin

Title of Officer: Assistant Commissioner for Regulatory Boards

Agency/Board/Commission: Tennessee Home Inspector Licensing Program

Rule Chapter Number(s): 0780-05-12-.10 Standards of Practice

All rulemaking hearing 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.


Jonathan Skrmetti
Attorney General and Reporter
Nov. 8, 2023
Date

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Secretary of State
Division of Publications


Tre Hargett
Secretary of State

Public Hearing Comments

Ten (10) comments were submitted in advance prior to the rulemaking hearing. Additionally, six (6) comments were made at the rulemaking hearing.

Comments 1 - 5: "I am joining my fellow Tennessee licensed home inspectors in objection to the proposed amendments to our Standards of Practice concerning the inspection of fire alarms. I have been made aware of these proposed changes and feel that the changes, as written, place substantial additional liability on my profession that could result in unjust exposure to additional liability connected to a device that requires the owner's upkeep and upgrading. We are currently directed by the SOP to test all accessible devices unless they are part of a monitored system. I already inform my clients if there are less than the currently recommended, properly placed alarms, (in all bedrooms, halls, kitchens, garages, mechanical rooms, attics, crawlspaces, any room with gas or wood heat, and on all floors) and educate them to the need for maintenance, testing and replacement. The subjectiveness of some of the proposed changes are not as black and white as the SOP as it is currently written. I feel like my exposure legally and monetarily could be substantially increased with these changes. I can also see, with the amount of additional liability these changes could place on this profession, every fire in a home that has been inspected to be able to be possibly attributed to an inspector, that when the insurance companies see the increase in claims due to our increase in liability, our already high insurance rates could increase. I, and my fellow Tennessee licensed home inspectors are soliciting you to not change the current SOP to include the proposed Rule 0780-05-12-.10(9)(d) Rules 1,2, 3,4 and 5, as written as they are vague and subjective and/or require equipment to be more than visually inspected, as well as being responsible to contact other parties as it pertains to monitoring entities (1). We feel like these rules will leave us unjustly exposed to responsibilities/liabilities that should not be ours. I appreciate your taking the time to read my concerns and hope you will consider my input as you move forward. Thanking you in advance for your consideration. Best Regards." (Submitted by Mr. Dale Witt, Mr. Jimmy Guinn, Mr. Danny Bennett, Mr. Larry, Blinn, Mr. Mark Moffatt, and Mr. Todd Thuss.)

Responses 1 - 5: The Department thanks Mr. Witt, Mr. Guinn, Mr. Bennett, Mr. Blinn, Mr. Moffatt, and Mr. Thuss for their comments and for participating in the hearing and further notes that these comments were made prior to the adoption of additional revisions that resulted from discussions with industry members and stakeholders prior to the hearing. The revisions, as presented at the hearing, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property.

Comment 6: "Mr. Thuss submitted the same information in Comment 1, plus the additional: "Note that: 1. Not all alarms are accessible without special ladders or lifts. 2. Checking alarms for a date code (that may or may not be visible) adds considerable time and effort to an inspection. This is an onerous requirement. 3. The test button on a smoke alarm only checks whether the unit has power and its alarm device functions; the test does not indicate whether the actual sensor functions properly. Only testing with a smoke test can determine this. Therefore, checking each detector using its test button adds considerable time and liability to an inspection but doesn't yield useful information." (Submitted by Mr. Todd Thuss)

Response 6: The Department thanks Mr. Thuss for his comments and for participating in the hearing and further notes that his comments were made prior to the adoption of additional revisions that resulted from discussions with industry members and stakeholders prior to the hearing. The revisions, as presented at the hearing, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property.

Comment 7: "It is my opinion that the proposed amendment to the Standards of Practice for Home Inspectors is riddled with serious flaws. Please consider the following: As to determining whether a smoke detector is deficient: The test button on a smoke detector only checks the functionality of the ALARM, not whether it will actually sense smoke. I can only confirm the presence of the device and the functionality of the alarm portion of the device. It is impossible to determine if the smoke detector senses smoke without producing smoke for it to sense, which is obviously undesirable for many reasons. Therefore, it is impossible for me to determine if a smoke detector is deficient as the proposed amendment would require. Also, the proposed amendment does not define the parameters of the term "deficient." Without an explicit definition of "deficient," the rule may be interpreted in any number of ways which will lead to confusion in the industry, non-standard recommendations for clients, and

potential liability for the inspector who is left to guess what the state means. The proposed amendment uses the following wording: "Any area where the home inspector believes smoke alarms may be insufficient;" The National Fire Protection Association (NFPA.org) established required locations, but state and local government mandate their ordinances locally. This is rigidly dictated. This might better be worded as "identifies", rather than "believes", which seems more subjective. Of great concern to me and my peers, are the five proposed rules that are a matter of belief or opinion and the two rule changes that require Home Inspectors to access information that is rarely available such as the company that monitors the alarms. These rules unfairly expose Inspectors to high levels of liability. If any home I have inspected were to catch fire I might be held liable for the damage regardless of when I inspected the home or whether the smoke detectors were indeed functional which, as stated above, is not possible to fully determine. Since the law provides no limit of liability to home inspectors in terms of monetary responsibility or time limits, will we be held responsible in perpetuity? When reporting on smoke detectors in accordance with the new rule changes I will be left with no choice but to assert that further evaluation will be required by the local fire marshall or codes enforcement agency. This rule does not actually protect homeowners and will simply create an abrogation condition. I do not object to being required to inform my clients that they may be able to acquire a free smoke detector from the state Fire Marshal but please clarify how many detectors can be acquired per request. I would also like to understand why it is that the state feels that it should compete in the marketplace with for-profit businesses that provide and install smoke detectors. What is the state's budget for free smoke detectors? Does anyone qualify for free stuff from the state? These are serious concerns that will force increases in prices for consumers and increases in insurance costs for Inspectors due to regulatory ambiguity, lack of clarity, and fuzziness of interpretation. As worded, the proposed changes will unfairly increase liability to inspectors and place me in a position that makes the profession too risky. Please consider adjusting and clarifying the proposed amendment." (Submitted by Mr. Will Carmichael)

Response 7: The Department thanks Mr. Carmichael for his comments and for participating in the hearing and further notes that his comments were made prior to the adoption of additional revisions that resulted from discussions with industry members and stakeholders prior to the hearing. The revisions, as presented at the hearing, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property. Where potential for life-saving equipment in the form of a smoke alarm exists, the SFMO is positioned to meet that need in fulfillment of their mission regarding public safety.

Comment 8: "While testing smoke detectors, pushing the test button, only tests the button, not the sensor, pushing the test button will not do anything, no one dates the detector, ever, so recommending they be replaced is the best thing to do. The bigger issue is making sure there are co2 detectors in every house that has gas. Most homes don't. Thanks." (Submitted by Mr. Steve Clark)

Response 8: The Department thanks Mr. Clark for his comments and for participating in the hearing and further notes that his comments were made prior to the adoption of additional revisions that resulted from discussions with industry members and stakeholders prior to the hearing. The revisions, as presented at the hearing, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property.

Comment 9: "I have read over the proposed language for the Home Inspector Standards of Practice proposal. This has some very alarming language that drastically alters the liability of a home inspector. This also puts a home inspector at great risk of damaging the interior of a home that is not owned by our client or by us as home inspectors. When the interior of a home is damaged the owners may file a law suit for damages. The addition of much of this language will force a home inspector to make recommendations that are not necessary and create undue hardship on sellers, buyers, and realtors. I do believe that much of this language is not in the best interest of the public welfare. A typical home inspector works with the best interest of our clients and helping them to obtain the free smoke alarm is a great opportunity that the State has recognized. I request that this language be excluded from the SOP in order that home inspection report language can assist this State Funded Program rather than hinder it. Part 9 (d) 2 Any deficient or non-working smoke alarms: Some smoke alarms in homes are more than 15 feet in the air. This will require carrying a ladder into a home and leaning it against a wall or ceiling and likely damaging the surfaces of the wall, ceiling, and flooring. This also provides a false confidence that if the test button produces a sound from the smoke alarm that it is functional. If a house burns down and the smoke alarms don't sound then the blame will be placed squarely on the home inspector. Part 9 (d) 3 Any smoke alarms that the home inspector otherwise believes may require replacement. This language will force the home inspector

to put language in their reports that state all smoke alarms must be replaced immediately. Part 9 (d) 4 Any area where the home inspector believes smoke alarms may be insufficient. Since building codes are forever changing this wide open statement will force the home inspector to state that smoke alarms should be installed in every room of the home. This is a liability statement in the SOP that can haunt a home inspector for many years after a home inspection is completed. Part 9 (d) 5 The location of any smoke alarm, and any additional information reasonably necessary to sufficiently identify the smoke alarm, that is more than ten (10) years old from its date of manufacture and a recommendation that any such smoke alarm be replaced with a device of the same type; and.... Again this language creates increased liability for damaging the interior of a home. This language does not specify the "type" of smoke alarm and the "type" of smoke alarm is not typically part of the manufacturers labeling. How should a home inspector report a thermally activated wound spring type of smoke alarm. These smoke alarms don't have expiration dates. I do plan to attend the May 12 meeting." (Submitted by Mr. Tim Fuller)

Response 9: The Department thanks Mr. Fuller for his comments and for participating in the hearing and further notes that his comments were made prior to the adoption of additional revisions that resulted from discussions with industry members and stakeholders prior to the hearing. The revisions, as presented at the hearing, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property.

Comment 10: "We have 17 home inspectors and cover all of East TN....our reports already include exactly what you are looking for and we have encouraged others to do so. I was active in many roles with the fire service in fire prevention and my husband who started the company in 1997 is a retired firefighter. We would love to testify or share what we do to help with this life saving change. I have attached our sample report so you can see how we have utilized exactly what you are speaking of..... We also have a friend who is a real estate agent that helped us promote this who lost her brother and nephew in a tragic fire, no working smoke alarms.....Warmest regards." (Submitted by Ms. Susan Bentley)

Response 10: The Department thanks Ms. Bentley for her comments and for participating in the hearing.

Comment 11: "Thank you very much for the most recent changes. A lot of the comments, we recognize, were made prior to the most changes in this draft. So, it really feels like you all listened to the feedback and took the feedback and adjusted appropriately. I only have a couple of more points to make. I think a lot of us were prepared to talk about the draft we saw online a couple of months ago. So, this is a more welcomed version. First of all, I asked the question what is the goal for the change? A lot of us would help get behind changes like this if we understood the purpose, the goal and why we were making the change in the first place. The second question would be, does this final version—and I know it's not final yet, but I'm going to pretend this is the final version—does this version achieve that goal that was originally set out? Another point I would like to bring up is, on Section (5) or Number (5)—Paragraph (d), Number (5) says 'If the battery-powered smoke alarms appear, etc.' How do we know if it's battery-powered or battery backup powered? It doesn't differentiate between that. There are some differentiations it doesn't make. But the gist of this is good. It get it. It does not address monitored systems. It did take out the active testing of each system. So, that should be a moot point in this situation. Again, on the final version. With that, that's all I have to say other than thank you for listening to the feedback and answer the questions of: did this accomplish the goal that we originally set out to accomplish?" (Made by Mr. Chris Cuttrell)

Response 11: The Department thanks Mr. Cuttrell for his comments and for participating in the hearing and further appreciates his acknowledgement that additional revisions have resulted from discussions with industry members and stakeholders prior to the hearing. These revisions in pursuit of public health, safety, and welfare, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property. Where potential for life-saving equipment in the form of a smoke alarm exists, the SFMO is positioned to meet that need in fulfillment of their mission regarding public safety.

Comment 12: "I'd like to thank you very much for inviting to have this public meeting. When this kicked off in September 2022, with Glenn Kopchak, Gary Farley, and Marybeth Gribble, when we sat in the meeting and this began to come to light, I was very enthused for the home inspectors that a program like this was pushed through by the Fire Marshal's Office and then introduced to allow home inspectors to begin working on a program like this to help so many people. And so, we kicked off this smoke alarm program to the Home Inspectors of Tennessee Association at our Home Inspector Expo in October of 2022. And that was incredibly well-received. I got a lot of

comments from home inspectors thanking the State for bringing something like this forward. And so, when we began looking at some of the wording back in September, we talked about taking smoke alarms apart and how it increases liability in the meeting in September. So, when we saw the outline that came out, the original first draft, you can see the response that came about. Since that time, we have looked at several other options and had several conversations which I'm immensely grateful for. As a short-term comment, I would appreciate that the State would consider inviting home inspectors into this meeting before any original language is originally drafted. I think some of this controversy could have been avoided very early on in the process of it. In the meantime, this draft that we see here today is much more palatable as far as removing the liability that we face as a home inspector as we got into homes. Because since the home inspector doesn't own the home, and the house that we're in is not owned by the people that hire us, the risk of causing damage into these homes is significant. So, you try to be as careful as you can. Almost every home inspector will wear special shoes inside. One of the things that Standards of Practice also asks us to do is to remove the cover from an electric panel. And so, in order to report the wiring and the amperage of the circuit breakers that they're connected to. And this is very important based on how often you see problems along those lines. Even with that, the number of phone calls that a home inspector can get regarding causing damage to a home still appears pretty regularly. So, that's why you're seeing such a response with the smoke alarms that the risk of causing damage to a home that isn't owned by anyone that's party to the report creates a great deal of alarm. In the meantime, with what you've done with this, this has been tremendous. Mr. Glenn Kopchak, Mr. Alex Martin, we sure appreciate all your input and your concern. And thank you for the time. And this is a much more palatable version." (Made by Mr. Tim Fuller)

Response 12: The Department thanks Mr. Fuller for his comments and for participating in the hearing and further appreciates his acknowledgement that additional revisions have resulted from discussions with industry members and stakeholders prior to the hearing. These revisions in pursuit of public health, safety, and welfare, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property.

Comment 13: "You all, I was doing home inspectors before the licensing program was even a thing. I remember back then a lot of the inspectors that were already working were really against it. And it just confused me. I was for it. I think it's an amazing thing. I appreciate the work that you guys do. I feel like it has the program in general, has made our profession better. And the whole point is to serve our clients, to serve the people who are hiring us to inspect these houses. I like the, I guess, the spirit behind this. You know, fire, obviously, is a bad thing. And I also feel like a lot of the questions I had and a lot of statements I had were very well articulated in the emails and the two guys that have spoken. But I do want to reiterate what is the why? What are we fixing that was broke? That's one question I have. And the other point I want to make, that Tim has already made. I have an inspection firm and we have a handful of inspectors. I don't really want my guys taking people's smoke detectors off their ceilings because of what Tim said. You will cause damage. It's inevitable. I think that's a bad idea. And I don't know any other way to determine how old a smoke detector is. Those are my concerns. And another thing I feel is important for all of us to think about is when we're going through a home, and we get to the report of—whether we have a list or a checklist or a template or whatever that reminds us, it's time to look for smoke detectors, and it's hugely important for obvious reasons. And my concern with requiring us to take apart people's things to determine how old something is, what's going to happen is we're going to get a blanket statement in our templates to cover us for liability. And it's going to say something like, replacing all smoke detectors. And over this 17, 18 years of inspecting I've learned that people don't really do a lot of the things that we recommend. So, what's happening is we're just trying to cover ourselves and say, yeah, replace them all, potentially. And when they don't do it, then, you know, there's a tragedy. I don't know if I articulated that well. But I really want to avoid taking apart people's things in their homes. I think that's a bad idea. So, anyway, I hope that was clear. Thank you for your work. It's important what you guys do. I appreciate it. Thanks." (Made by Mr. Brent Scott)

Response 13: The Department thanks Mr. Scott for his comments and for participating in the hearing. These revisions in pursuit of public health, safety, and welfare, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property. Where potential for life-saving equipment in the form of a smoke alarm exists, the SFMO is positioned to meet that need in fulfillment of their mission regarding public safety.

Comment 14: "Good morning. I'm here for other reasons. I did not get any of this information. I was very upset when I found out through multiple different inspectors. You might want to have someone check that out. I know it didn't go to "spam." I did check. I have a couple issues with this. Not bad. I don't have a problem with language,

per se. But there are some things that I think you guys haven't looked into it. Such as electrical standards for Tennessee has changed. When you have an electrical panel, they don't do that anymore. Or if they're lucky they do. My electrician, who just updated my electrical panel, has put me on a Bluetooth. I don't want to touch any of these. I don't even want to touch mine. Because if you touch it, it screws up the whole system. I don't think this should be touched. I don't think this should even be looked at because half the time you won't even know what you're looking at. It looks very much like the regular batteries, but they're not. They're very different. They have to be put into a wireless network. And God only knows if it works or not. And if the network goes down, you have to reset everything. I have a question about "4" and "5." What happens if—even if you say battery backup, battery, or if it's connected to the panel, how do you know? I don't want to be the person who says, yes, I believe it's battery backup and come to find out it's not. And they don't replace it anyway. Because people never listen to us and replace anything. So, we are not responsible for that? I'm just curious. Then if there was another way of getting this out, how does this work in our benefit when they don't read it? Because I get calls and I know everyone back here and I'm pretty sure everybody online have gotten phone calls where they never listen or never read the darn report. We have to literally go back and show them exactly where it is. And they still argue with us. We don't have any choice in the matter, and they still try to sue us. So, I'm okay with it. But at the same time, when do we give the personal responsibility to them no matter what? I don't want to be a mom. I don't want to be paid to be Mom." (Made by Ms. Christine Farnsworth)

Response 14: The Department thanks Ms. Farnsworth for her comments and for participating in the hearing. These revisions in pursuit of public health, safety, and welfare, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property.

Comment 15: "Morning, everybody. As others have said we appreciate the willingness to listen and include our comment and feedback and that the proposed changes are substantial. Thank you. My comments today are in the form of questions that I hope can get answered before final draft makes it to a legislative level. Specifically, some of the remaining ambiguity in the proposed amendments. Number 1 and Number 2 have a level of redundancy that I'm looking for the rulemaking intent behind the differentiation between these two rules. The commentary of presence or absence of some alarms is certainly beneficial, but it is the intent akin to a fire codes inspection? Is there intending to be a comment on every room of the house or simply the rooms that require smoke alarms as per the 2018 fire code? Trying to figure out the difference between these two rules I think will help inspectors know how best to proceed onsite and how best to interpret the SOP. Additionally, Numbers 4 and 5 have a similarity using this language "of the same type." Trying to figure out exactly what is the intention of the rulemaking intent. Is it to update to a modern fire code to allow for reduction of catastrophe, or is it to replace with whatever is present? And if there is a specific need for the battery-powered language to be present, I would ask that it be further clarified. Because as has been stated here, it's not immediately obvious sometimes to an inspector onsite. And if the goal is to update smoke alarm presence, as well as provide new smoke alarms for the ones that are old, there may be a way to clarify these rules to allow for that to be taken place under on SOP change. And that is my comment today. Thanks, guys." (Made by Mr. Michael Conrad)

Response 15: The Department thanks Mr. Conrad for his comments and for participating in the hearing and further appreciates his acknowledgement that additional revisions have resulted from discussions with industry members and stakeholders prior to the hearing. These revisions in pursuit of public health, safety, and welfare, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property. Further, #2 provides additional clarity to #1, and #5 distinguishes "battery-powered" smoke alarms from others with referral for remediation.

Comment 16: "Thank you, guys, for what you're doing with this. I just want to start out with a question for the Board. Has any one of the board members been on and actually shadowed a home inspector during their inspection or several inspections? And if they have, then they would see that the state of Tennessee has done a great job by going to a licensing program with a Tennessee Home Inspector Association that is providing education for the inspectors. The guys really have their clients' best interests in mind. Which is, with this proposed change, it sounds like the Board is shooting for and wanting the best for the public. And just understand that the home inspectors want the same exact thing. But the problem is that we're inspecting systems and components within that house that will fail at some point. So, to come in—and, you know, these are—that is something that comes to my mind. Is the ten years. Where did the ten years come from? If a smoke alarm is over ten years old, it needs to be replaced? Because what could happen, and I just seen this without E&O insurance. Well, we

inspected a house and we looked at the detector. They said they were nine years old. So, they were younger than ten years. Therefore, I didn't put in my report that they needed to be replaced. Yet, two years later, the house burns down and kill someone. Then that family comes back and sues us because we should have, with one year to go, we could have put a comment in the report saying, well, if you're at nine years, within one year, you need to replace your smoke detector. Because the judge might say, Mr. Larkins, you should have told them it was pretty close to the end of that smoke detector's life. You know, in a year. But since you didn't tell them that it needed to be replaced in a year, it went two and failed and someone died. I'm just throwing these things out there as thoughts. Well, then, maybe at eight years we should tell them within two years that you should replace your smoke detectors. You know, where does it stop? So, you know, just closing for me, kind of what the other inspectors are saying. We have our clients' best interests in mind. We do what we can. But it seems some of what the State is asking us to do by changing and amending the comments here for SOP is just kind of adding some liability to us where guys are going to try to get on ladders where they shouldn't. I can't tell you how many times I've touched, just loosely touched a smoke detector on a wall to test it, and the thing fell off in my hand because it was held on by tape. And that's where I would say that, you know, the mindset of where I think the Board wants to go and the safety of the public is correct. But I think offering and changing standards to include additional liability on the inspector is kind of unfair without knowing exactly what we do. But again, I do appreciate everyone's time today. I do appreciate this open forum. I like the revisions I think we're working in the right direction. But I would say that I feel like there needs to be more thought-process put into any potential and changes to the current SOP." (Made by Mr. Tim Larkins)

Response 16: The Department thanks Mr. Larkins for his comments and for participating in the hearing and further appreciates his acknowledgement that additional revisions have resulted from discussions with industry members and stakeholders prior to the hearing. These revisions in pursuit of public health, safety, and welfare, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The type or types of small business and an identification and estimate of the number of small businesses subject to the rule being proposed that would bear the cost of, or directly benefit from the rule being proposed;

The Program does not foresee small businesses bearing significant costs to comply with the rule amendments. Most of the Program's licensees are made of small businesses and the rule amendments will impact all licensees. However, these rule amendments are a needed expansion of a presently required area of inspection for licensees. It is likely that many licensees are currently including much of this information in their reports, as these rules reflect modern practices. Therefore, a cost of compliance, if any, will be minimal.

The projected reporting, recordkeeping and other administrative costs required for compliance with the rule being proposed, including the type of professional skills necessary for preparation of the report or record;

The Program does not foresee a cost for the administration and enforcement of these rule amendments.

A statement of the probable effect on impacted small businesses and consumers;

The Program does not foresee a significant impact on small businesses with these rule amendments. Although most licensees are small businesses, these rule amendments apply to all licensees. The rule amendments expand on a presently required area of inspection for licensees and reflect modern practices. As these rules reflect modern practices and enhance fire safety measures related to smoke alarms, the Program foresees these rules as beneficial to licensees, their small businesses, and consumers.

A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the rule being proposed that may exist, and to what extent the alternative means might be less burdensome to small business;

The Program knows of no other less restrictive or burdensome means than through the promulgation of these rules as amended.

A comparison of the rule being proposed with any federal or state counterparts; and

Rules and regulations for home inspector programs across the country vary. However, it is likely the rule amendments are like current or proposed rules and regulations in other state-level jurisdictions. The Program is unaware of any similar existing or proposed federal rules.

Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the rule being proposed.

The Program does not foresee the need for a possible exemption of the requirements in the proposed rule amendments for small businesses. The rule amendments apply equally to all licensees, regardless of the size of their business. Therefore, the Program does not see a disparate impact to small businesses. Additionally, these rule amendments expand on current inspection requirements for all licensees that are applied equally. Therefore, an exemption for small businesses would not be beneficial.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

The Home Inspector Licensing Program foresees no impact on any 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 proposed rule amendments update the home inspector standards of practice for smoke alarm reporting. Specifically, the rule amendments clarify the reporting requirements for licensees including indicating the presence or absence of smoke alarms, the area and location of the smoke alarms, whether smoke alarms appear more than ten (10) years from the date of manufacture, whether a replacement is required, and if so, require the licensee to make replacement recommendations of the same kind. Lastly, the proposed rule amendments provide licensees should direct requests for replacement battery-powered smoke alarms to the State Fire Marshal's Office.

- (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;

There are no known federal or state laws or regulations mandating promulgation.

- (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;

The rule would affect current and future licensees and applicants. Based on comments received since publication of the Notice of Rulemaking Hearing, the Program has received support and opposition from licensees. The Program has worked diligently to work with industry members and stakeholders to address any potential opposition, and believes the proposed final version are beneficial and necessary to effectuate the Program's initiatives as it relates to home inspections and smoke alarm safety and awareness. The Tennessee Home Inspector Licensing Program urges adoption of these rule amendments.

- (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;

There are no known opinions of the Attorney General and Reporter or any judicial rulings that directly relate to this rule.

- (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;

There is no foreseeable probable increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule.

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

Anna D. Matlock, Associate General Counsel for the Tennessee Home Inspector Licensing Program
Glenn Kopchak, Executive Director for the Tennessee Home Inspector Licensing Program

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

Anna D. Matlock, Associate General Counsel for the Tennessee Home Inspector Licensing Program
Glenn Kopchak, Executive Director for the Tennessee Home Inspector Licensing Program

- (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

Anna D. Matlock
500 James Robertson Parkway, Nashville TN 37243
(615) 253-0070
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Glenn Kopchak
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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

There is no known additional relevant information.

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Sequence Number: _____
Rule ID(s): _____
File Date: _____
Effective Date: _____

Rulemaking Hearing Rule(s) Filing Form - **REDLINE**

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Home Inspector Licensing Program
Contact Person:	Anna D. Matlock
Address:	500 James Robertson Parkway, Nashville, Tennessee
Zip:	37212
Phone:	(615) 253-0070
Email:	Anna.Matlock@tn.gov

Revision Type (check all that apply):

☒ Amendment
☐ New
☐ Repeal

☐ Content based on previous emergency rule filed on _____
☐ Content is identical to the emergency rule

Rule(s) (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
0780-05-12	Home Inspectors
Rule Number	Rule Title
0780-05-12-.10	Standards of Practice

Chapter 0780-05-12
Home Inspectors
Amendments

Rule 0780-05-12-.10 Standards of Practice, Paragraph (9) is amended by deleting subparagraph (a) part (8) in its entirety so that, as amended, Paragraph (9) subparagraph (a) of the Rule, as amended, shall read:

(9) Electrical Systems.

(a) The home inspector shall inspect:

1. Service entrance conductors;
2. Service equipment, ground equipment, main overcurrent device, and main distribution panels;
3. Amperage and voltage ratings of the service;
4. Branch circuit conductors, their overcurrent devices, and the compatibility of their ampacities and voltages;
5. The operation of a representative number of installed ceiling fans, lighting fixtures, switches and receptacles located inside the house, garage, and on the dwelling's exterior walls;
6. The polarity and grounding of all receptacles within six feet of interior plumbing fixtures, and all receptacles in the garage or carport, and on the exterior of inspected structures;
and
7. The operation of ground fault circuit interrupters. and

~~8. Smoke detectors.~~

Authority: T.C.A. §§ 62-6-303(a)(5), (6) ~~[effective July 1, 2006], and Chapter 65 of the Public Acts of 2005, §§ 4, 11, and 12.~~

Rule 0780-05-12-.10 Standards of Practice, Paragraph (9) is amended by deleting the text of subparagraph (d) in its entirety and substituting instead language so that, as amended, (9)(d) shall read:

(d) The home inspector shall report: ~~on the presence or absence of smoke detectors. If the smoke detector is an individual (stand alone) unit, the home inspector shall operate its test function. If the smoke detector is incorporated into an alarm system, the entity that monitors the alarm system should test the smoke detector.~~

1. The presence or absence of smoke alarms;
2. The presence or absence of smoke alarms by location of the area and/or room;
3. If any area and/or room contain smoke alarms that appear to have been painted and/or obstructed by stickers or otherwise covered. If so, the home inspector shall recommend that any such smoke alarm be replaced with a device of the same type;
4. If any smoke alarms appear more than ten (10) years from the date of manufacture, and recommend that any such smoke alarm be replaced with a device of the same type;

5. If battery-powered smoke alarms appear more than ten (10) years from the date of manufacture, a request by the owner for that type of device shall be directed to the State Fire Marshal's Office; and
6. All requirements as set forth in paragraph (9)(d) except when access is obstructed, could damage the property, or when dangerous or adverse situations are suspected.

Authority: T.C.A. §§ 62-6-303~~(a)(5), (6) [effective July 1, 2006], and Chapter 65 of the Public Acts of 2005, §§ 4, 11, and 12.~~

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A	N/A	N/A	N/A	N/A	N/A

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Commerce and Insurance (board/commission/other authority) on 05/12/2023 (mm/dd/yyyy) and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 03/20/2023

Rulemaking Hearing(s) Conducted on: (add more dates). 05/12/2023

Date: _____

Signature: _____

Name of Officer: Alex Martin

Title of Officer: Assistant Commissioner for Regulatory Boards

Agency/Board/Commission: Tennessee Home Inspector Licensing Program

Rule Chapter Number(s): 0780-05-12-.10 Standards of Practice

All rulemaking hearing 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.

Jonathan Skrmetti
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

Ten (10) comments were submitted in advance prior to the rulemaking hearing. Additionally, six (6) comments were made at the rulemaking hearing.

Comments 1 - 5: "I am joining my fellow Tennessee licensed home inspectors in objection to the proposed amendments to our Standards of Practice concerning the inspection of fire alarms. I have been made aware of these proposed changes and feel that the changes, as written, place substantial additional liability on my profession that could result in unjust exposure to additional liability connected to a device that requires the owner's upkeep and upgrading. We are currently directed by the SOP to test all accessible devices unless they are part of a monitored system. I already inform my clients if there are less than the currently recommended, properly placed alarms, (in all bedrooms, halls, kitchens, garages, mechanical rooms, attics, crawlspaces, any room with gas or wood heat, and on all floors) and educate them to the need for maintenance, testing and replacement. The subjectiveness of some of the proposed changes are not as black and white as the SOP as it is currently written. I feel like my exposure legally and monetarily could be substantially increased with these changes. I can also see, with the amount of additional liability these changes could place on this profession, every fire in a home that has been inspected to be able to be possibly attributed to an inspector, that when the insurance companies see the increase in claims due to our increase in liability, our already high insurance rates could increase. I, and my fellow Tennessee licensed home inspectors are soliciting you to not change the current SOP to include the proposed Rule 0780-05-12-.10(9)(d) Rules 1,2, 3,4 and 5, as written as they are vague and subjective and/or require equipment to be more than visually inspected, as well as being responsible to contact other parties as it pertains to monitoring entities (1). We feel like these rules will leave us unjustly exposed to responsibilities/liabilities that should not be ours. I appreciate your taking the time to read my concerns and hope you will consider my input as you move forward. Thanking you in advance for your consideration. Best Regards." (Submitted by Mr. Dale Witt, Mr. Jimmy Guinn, Mr. Danny Bennett, Mr. Larry, Blinn, Mr. Mark Moffatt, and Mr. Todd Thuss.)

Responses 1 - 5: The Department thanks Mr. Witt, Mr. Guinn, Mr. Bennett, Mr. Blinn, Mr. Moffatt, and Mr. Thuss for their comments and for participating in the hearing and further notes that these comments were made prior to the adoption of additional revisions that resulted from discussions with industry members and stakeholders prior to the hearing. The revisions, as presented at the hearing, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property.

Comment 6: "Mr. Thuss submitted the same information in Comment 1, plus the additional: "Note that: 1. Not all alarms are accessible without special ladders or lifts. 2. Checking alarms for a date code (that may or may not be visible) adds considerable time and effort to an inspection. This is an onerous requirement. 3. The test button on a smoke alarm only checks whether the unit has power and its alarm device functions; the test does not indicate whether the actual sensor functions properly. Only testing with a smoke test can determine this. Therefore, checking each detector using its test button adds considerable time and liability to an inspection but doesn't yield useful information." (Submitted by Mr. Todd Thuss)

Response 6: The Department thanks Mr. Thuss for his comments and for participating in the hearing and further notes that his comments were made prior to the adoption of additional revisions that resulted from discussions with industry members and stakeholders prior to the hearing. The revisions, as presented at the hearing, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property.

Comment 7: "It is my opinion that the proposed amendment to the Standards of Practice for Home Inspectors is riddled with serious flaws. Please consider the following: As to determining whether a smoke detector is deficient: The test button on a smoke detector only checks the functionality of the ALARM, not whether it will actually sense smoke. I can only confirm the presence of the device and the functionality of the alarm portion of the device. It is impossible to determine if the smoke detector senses smoke without producing smoke for it to sense, which is obviously undesirable for many reasons. Therefore, it is impossible for me to determine if a smoke detector is deficient as the proposed amendment would require. Also, the proposed amendment does not define the parameters of the term "deficient." Without an explicit definition of "deficient," the rule may be interpreted in any number of ways which will lead to confusion in the industry, non-standard recommendations for clients, and

potential liability for the inspector who is left to guess what the state means. The proposed amendment uses the following wording: "Any area where the home inspector believes smoke alarms may be insufficient;" The National Fire Protection Association (NFPA.org) established required locations, but state and local government mandate their ordinances locally. This is rigidly dictated. This might better be worded as "identifies", rather than "believes", which seems more subjective. Of great concern to me and my peers, are the five proposed rules that are a matter of belief or opinion and the two rule changes that require Home Inspectors to access information that is rarely available such as the company that monitors the alarms. These rules unfairly expose Inspectors to high levels of liability. If any home I have inspected were to catch fire I might be held liable for the damage regardless of when I inspected the home or whether the smoke detectors were indeed functional which, as stated above, is not possible to fully determine. Since the law provides no limit of liability to home inspectors in terms of monetary responsibility or time limits, will we be held responsible in perpetuity? When reporting on smoke detectors in accordance with the new rule changes I will be left with no choice but to assert that further evaluation will be required by the local fire marshal or codes enforcement agency. This rule does not actually protect homeowners and will simply create an abrogation condition. I do not object to being required to inform my clients that they may be able to acquire a free smoke detector from the state Fire Marshal but please clarify how many detectors can be acquired per request. I would also like to understand why it is that the state feels that it should compete in the marketplace with for-profit businesses that provide and install smoke detectors. What is the state's budget for free smoke detectors? Does anyone qualify for free stuff from the state? These are serious concerns that will force increases in prices for consumers and increases in insurance costs for Inspectors due to regulatory ambiguity, lack of clarity, and fuzziness of interpretation. As worded, the proposed changes will unfairly increase liability to inspectors and place me in a position that makes the profession too risky. Please consider adjusting and clarifying the proposed amendment." (Submitted by Mr. Will Carmichael)

Response 7: The Department thanks Mr. Carmichael for his comments and for participating in the hearing and further notes that his comments were made prior to the adoption of additional revisions that resulted from discussions with industry members and stakeholders prior to the hearing. The revisions, as presented at the hearing, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property. Where potential for life-saving equipment in the form of a smoke alarm exists, the SFMO is positioned to meet that need in fulfillment of their mission regarding public safety.

Comment 8: "While testing smoke detectors, pushing the test button, only tests the button, not the sensor, pushing the test button will not do anything, no one dates the detector, ever, so recommending they be replaced is the best thing to do. The bigger issue is making sure there are co2 detectors in every house that has gas. Most homes don't. Thanks." (Submitted by Mr. Steve Clark)

Response 8: The Department thanks Mr. Clark for his comments and for participating in the hearing and further notes that his comments were made prior to the adoption of additional revisions that resulted from discussions with industry members and stakeholders prior to the hearing. The revisions, as presented at the hearing, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property.

Comment 9: "I have read over the proposed language for the Home Inspector Standards of Practice proposal. This has some very alarming language that drastically alters the liability of a home inspector. This also puts a home inspector at great risk of damaging the interior of a home that is not owned by our client or by us as home inspectors. When the interior of a home is damaged the owners may file a law suit for damages. The addition of much of this language will force a home inspector to make recommendations that are not necessary and create undue hardship on sellers, buyers, and realtors. I do believe that much of this language is not in the best interest of the public welfare. A typical home inspector works with the best interest of our clients and helping them to obtain the free smoke alarm is a great opportunity that the State has recognized. I request that this language be excluded from the SOP in order that home inspection report language can assist this State Funded Program rather than hinder it. Part 9 (d) 2 Any deficient or non-working smoke alarms: Some smoke alarms in homes are more than 15 feet in the air. This will require carrying a ladder into a home and leaning it against a wall or ceiling and likely damaging the surfaces of the wall, ceiling, and flooring. This also provides a false confidence that if the test button produces a sound from the smoke alarm that it is functional. If a house burns down and the smoke alarms don't sound then the blame will be placed squarely on the home inspector. Part 9 (d) 3 Any smoke alarms that the home inspector otherwise believes may require replacement. This language will force the home inspector

to put language in their reports that state all smoke alarms must be replaced immediately. Part 9 (d) 4 Any area where the home inspector believes smoke alarms may be insufficient. Since building codes are forever changing this wide open statement will force the home inspector to state that smoke alarms should be installed in every room of the home. This is a liability statement in the SOP that can haunt a home inspector for many years after a home inspection is completed. Part 9 (d) 5 The location of any smoke alarm, and any additional information reasonably necessary to sufficiently identify the smoke alarm, that is more than ten (10) years old from its date of manufacture and a recommendation that any such smoke alarm be replaced with a device of the same type; and.... Again this language creates increased liability for damaging the interior of a home. This language does not specify the “type” of smoke alarm and the “type” of smoke alarm is not typically part of the manufacturers labeling. How should a home inspector report a thermally activated wound spring type of smoke alarm. These smoke alarms don’t have expiration dates. I do plan to attend the May 12 meeting.” (Submitted by Mr. Tim Fuller)

Response 9: The Department thanks Mr. Fuller for his comments and for participating in the hearing and further notes that his comments were made prior to the adoption of additional revisions that resulted from discussions with industry members and stakeholders prior to the hearing. The revisions, as presented at the hearing, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property.

Comment 10: “We have 17 home inspectors and cover all of East TN....our reports already include exactly what you are looking for and we have encouraged others to do so. I was active in many roles with the fire service in fire prevention and my husband who started the company in 1997 is a retired firefighter. We would love to testify or share what we do to help with this life saving change. I have attached our sample report so you can see how we have utilized exactly what you are speaking of..... We also have a friend who is a real estate agent that helped us promote this who lost her brother and nephew in a tragic fire, no working smoke alarms.....Warmest regards.” (Submitted by Ms. Susan Bentley)

Response 10: The Department thanks Ms. Bentley for her comments and for participating in the hearing.

Comment 11: “Thank you very much for the most recent changes. A lot of the comments, we recognize, were made prior to the most changes in this draft. So, it really feels like you all listened to the feedback and took the feedback and adjusted appropriately. I only have a couple of more points to make. I think a lot of us were prepared to talk about the draft we saw online a couple of months ago. So, this is a more welcomed version. First of all, I asked the question what is the goal for the change? A lot of us would help get behind changes like this if we understood the purpose, the goal and why we were making the change in the first place. The second question would be, does this final version—and I know it’s not final yet, but I’m going to pretend this is the final version—does this version achieve that goal that was originally set out? Another point I would like to bring up is, on Section (5) or Number (5)—Paragraph (d), Number (5) says ‘If the battery-powered smoke alarms appear, etc.’ How do we know if it’s battery-powered or battery backup powered? It doesn’t differentiate between that. There are some differentiations it doesn’t make. But the gist of this is good. It get it. It does not address monitored systems. It did take out the active testing of each system. So, that should be a moot point in this situation. Again, on the final version. With that, that’s all I have to say other than thank you for listening to the feedback and answer the questions of: did this accomplish the goal that we originally set out to accomplish?” (Made by Mr. Chris Cuttrell)

Response 11: The Department thanks Mr. Cuttrell for his comments and for participating in the hearing and further appreciates his acknowledgement that additional revisions have resulted from discussions with industry members and stakeholders prior to the hearing. These revisions in pursuit of public health, safety, and welfare, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property. Where potential for life-saving equipment in the form of a smoke alarm exists, the SFMO is positioned to meet that need in fulfillment of their mission regarding public safety.

Comment 12: “I’d like to thank you very much for inviting to have this public meeting. When this kicked off in September 2022, with Glenn Kopchak, Gary Farley, and Marybeth Gribble, when we sat in the meeting and this began to come to light, I was very enthused for the home inspectors that a program like this was pushed through by the Fire Marshal’s Office and then introduced to allow home inspectors to begin working on a program like this to help so many people. And so, we kicked off this smoke alarm program to the Home Inspectors of Tennessee Association at our Home Inspector Expo in October of 2022. And that was incredibly well-received. I got a lot of

comments from home inspectors thanking the State for bringing something like this forward. And so, when we began looking at some of the wording back in September, we talked about taking smoke alarms apart and how it increases liability in the meeting in September. So, when we saw the outline that came out, the original first draft, you can see the response that came about. Since that time, we have looked at several other options and had several conversations which I'm immensely grateful for. As a short-term comment, I would appreciate that the State would consider inviting home inspectors into this meeting before any original language is originally drafted. I think some of this controversy could have been avoided very early on in the process of it. In the meantime, this draft that we see here today is much more palatable as far as removing the liability that we face as a home inspector as we got into homes. Because since the home inspector doesn't own the home, and the house that we're in is not owned by the people that hire us, the risk of causing damage into these homes is significant. So, you try to be as careful as you can. Almost every home inspector will wear special shoes inside. One of the things that Standards of Practice also asks us to do is to remove the cover from an electric panel. And so, in order to report the wiring and the amperage of the circuit breakers that they're connected to. And this is very important based on how often you see problems along those lines. Even with that, the number of phone calls that a home inspector can get regarding causing damage to a home still appears pretty regularly. So, that's why you're seeing such a response with the smoke alarms that the risk of causing damage to a home that isn't owned by anyone that's party to the report creates a great deal of alarm. In the meantime, with what you've done with this, this has been tremendous. Mr. Glenn Kopchak, Mr. Alex Martin, we sure appreciate all your input and your concern. And thank you for the time. And this is a much more palatable version." (Made by Mr. Tim Fuller)

Response 12: The Department thanks Mr. Fuller for his comments and for participating in the hearing and further appreciates his acknowledgement that additional revisions have resulted from discussions with industry members and stakeholders prior to the hearing. These revisions in pursuit of public health, safety, and welfare, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property.

Comment 13: "You all, I was doing home inspectors before the licensing program was even a thing. I remember back then a lot of the inspectors that were already working were really against it. And it just confused me. I was for it. I think it's an amazing thing. I appreciate the work that you guys do. I feel like it has the program in general, has made our profession better. And the whole point is to serve our clients, to serve the people who are hiring us to inspect these houses. I like the, I guess, the spirit behind this. You know, fire, obviously, is a bad thing. And I also feel like a lot of the questions I had and a lot of statements I had were very well articulated in the emails and the two guys that have spoken. But I do want to reiterate what is the why? What are we fixing that was broke? That's one question I have. And the other point I want to make, that Tim has already made. I have an inspection firm and we have a handful of inspectors. I don't really want my guys taking people's smoke detectors off their ceilings because of what Tim said. You will cause damage. It's inevitable. I think that's a bad idea. And I don't know any other way to determine how old a smoke detector is. Those are my concerns. And another thing I feel is important for all of us to think about is when we're going through a home, and we get to the report of—whether we have a list or a checklist or a template or whatever that reminds us, it's time to look for smoke detectors, and it's hugely important for obvious reasons. And my concern with requiring us to take apart people's things to determine how old something is, what's going to happen is we're going to get a blanket statement in our templates to cover us for liability. And it's going to say something like, replacing all smoke detectors. And over this 17, 18 years of inspecting I've learned that people don't really do a lot of the things that we recommend. So, what's happening is we're just trying to cover ourselves and say, yeah, replace them all, potentially. And when they don't do it, then, you know, there's a tragedy. I don't know if I articulated that well. But I really want to avoid taking apart people's things in their homes. I think that's a bad idea. So, anyway, I hope that was clear. Thank you for your work. It's important what you guys do. I appreciate it. Thanks." (Made by Mr. Brent Scott)

Response 13: The Department thanks Mr. Scott for his comments and for participating in the hearing. These revisions in pursuit of public health, safety, and welfare, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property. Where potential for life-saving equipment in the form of a smoke alarm exists, the SFMO is positioned to meet that need in fulfillment of their mission regarding public safety.

Comment 14: "Good morning. I'm here for other reasons. I did not get any of this information. I was very upset when I found out through multiple different inspectors. You might want to have someone check that out. I know it didn't go to "spam." I did check. I have a couple issues with this. Not bad. I don't have a problem with language,

per se. But there are some things that I think you guys haven't looked into it. Such as electrical standards for Tennessee has changed. When you have an electrical panel, they don't do that anymore. Or if they're lucky they do. My electrician, who just updated my electrical panel, has put me on a Bluetooth. I don't want to touch any of these. I don't even want to touch mine. Because if you touch it, it screws up the whole system. I don't think this should be touched. I don't think this should even be looked at because half the time you won't even know what you're looking at. It looks very much like the regular batteries, but they're not. They're very different. They have to be put into a wireless network. And God only knows if it works or not. And if the network goes down, you have to reset everything. I have a question about "4" and "5." What happens if—even if you say battery backup, battery, or if it's connected to the panel, how do you know? I don't want to be the person who says, yes, I believe it's battery backup and come to find out it's not. And they don't replace it anyway. Because people never listen to us and replace anything. So, we are not responsible for that? I'm just curious. Then if there was another way of getting this out, how does this work in our benefit when they don't read it? Because I get calls and I know everyone back here and I'm pretty sure everybody online have gotten phone calls where they never listen or never read the darn report. We have to literally go back and show them exactly where it is. And they still argue with us. We don't have any choice in the matter, and they still try to sue us. So, I'm okay with it. But at the same time, when do we give the personal responsibility to them no matter what? I don't want to be a mom. I don't want to be paid to be Mom." (Made by Ms. Christine Farnsworth)

Response 14: The Department thanks Ms. Farnsworth for her comments and for participating in the hearing. These revisions in pursuit of public health, safety, and welfare, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property.

Comment 15: "Morning, everybody. As others have said we appreciate the willingness to listen and include our comment and feedback and that the proposed changes are substantial. Thank you. My comments today are in the form of questions that I hope can get answered before final draft makes it to a legislative level. Specifically, some of the remaining ambiguity in the proposed amendments. Number 1 and Number 2 have a level of redundancy that I'm looking for the rulemaking intent behind the differentiation between these two rules. The commentary of presence or absence of some alarms is certainly beneficial, but it is the intent akin to a fire codes inspection? Is there intending to be a comment on every room of the house or simply the rooms that require smoke alarms as per the 2018 fire code? Trying to figure out the difference between these two rules I think will help inspectors know how best to proceed onsite and how best to interpret the SOP. Additionally, Numbers 4 and 5 have a similarity using this language "of the same type." Trying to figure out exactly what is the intention of the rulemaking intent. Is it to update to a modern fire code to allow for reduction of catastrophe, or is it to replace with whatever is present? And if there is a specific need for the battery-powered language to be present, I would ask that it be further clarified. Because as has been stated here, it's not immediately obvious sometimes to an inspector onsite. And if the goal is to update smoke alarm presence, as well as provide new smoke alarms for the ones that are old, there may be a way to clarify these rules to allow for that to be taken place under on SOP change. And that is my comment today. Thanks, guys." (Made by Mr. Michael Conrad)

Response 15: The Department thanks Mr. Conrad for his comments and for participating in the hearing and further appreciates his acknowledgement that additional revisions have resulted from discussions with industry members and stakeholders prior to the hearing. These revisions in pursuit of public health, safety, and welfare, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property. Further, #2 provides additional clarity to #1, and #5 distinguishes "battery-powered" smoke alarms from others with referral for remediation.

Comment 16: "Thank you, guys, for what you're doing with this. I just want to start out with a question for the Board. Has any one of the board members been on and actually shadowed a home inspector during their inspection or several inspections? And if they have, then they would see that the state of Tennessee has done a great job by going to a licensing program with a Tennessee Home Inspector Association that is providing education for the inspectors. The guys really have their clients' best interests in mind. Which is, with this proposed change, it sounds like the Board is shooting for and wanting the best for the public. And just understand that the home inspectors want the same exact thing. But the problem is that we're inspecting systems and components within that house that will fail at some point. So, to come in—and, you know, these are—that is something that comes to my mind. Is the ten years. Where did the ten years come from? If a smoke alarm is over ten years old, it needs to be replaced? Because what could happen, and I just seen this without E&O insurance. Well, we

inspected a house and we looked at the detector. They said they were nine years old. So, they were younger than ten years. Therefore, I didn't put in my report that they needed to be replaced. Yet, two years later, the house burns down and kill someone. Then that family comes back and sues us because we should have, with one year to go, we could have put a comment in the report saying, well, if you're at nine years, within one year, you need to replace your smoke detector. Because the judge might say, Mr. Larkins, you should have told them it was pretty close to the end of that smoke detector's life. You know, in a year. But since you didn't tell them that it needed to be replaced in a year, it went two and failed and someone died. I'm just throwing these things out there as thoughts. Well, then, maybe at eight years we should tell them within two years that you should replace your smoke detectors. You know, where does it stop? So, you know, just closing for me, kind of what the other inspectors are saying. We have our clients' best interests in mind. We do what we can. But it seems some of what the State is asking us to do by changing and amending the comments here for SOP is just kind of adding some liability to us where guys are going to try to get on ladders where they shouldn't. I can't tell you how many times I've touched, just loosely touched a smoke detector on a wall to test it, and the thing fell off in my hand because it was held on by tape. And that's where I would say that, you know, the mindset of where I think the Board wants to go and the safety of the public is correct. But I think offering and changing standards to include additional liability on the inspector is kind of unfair without knowing exactly what we do. But again, I do appreciate everyone's time today. I do appreciate this open forum. I like the revisions I think we're working in the right direction. But I would say that I feel like there needs to be more thought-process put into any potential and changes to the current SOP." (Made by Mr. Tim Larkins)

Response 16: The Department thanks Mr. Larkins for his comments and for participating in the hearing and further appreciates his acknowledgement that additional revisions have resulted from discussions with industry members and stakeholders prior to the hearing. These revisions in pursuit of public health, safety, and welfare, no longer include operation of the test function, and provides exceptions where the smoke alarms are obstructed or if adverse situations arise that could create harm to personnel or property.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The type or types of small business and an identification and estimate of the number of small businesses subject to the rule being proposed that would bear the cost of, or directly benefit from the rule being proposed;

The Program does not foresee small businesses bearing significant costs to comply with the rule amendments. Most of the Program's licensees are made of small businesses and the rule amendments will impact all licensees. However, these rule amendments are a needed expansion of a presently required area of inspection for licensees. It is likely that many licensees are currently including much of this information in their reports, as these rules reflect modern practices. Therefore, a cost of compliance, if any, will be minimal.

The projected reporting, recordkeeping and other administrative costs required for compliance with the rule being proposed, including the type of professional skills necessary for preparation of the report or record;

The Program does not foresee a cost for the administration and enforcement of these rule amendments.

A statement of the probable effect on impacted small businesses and consumers;

The Program does not foresee a significant impact on small businesses with these rule amendments. Although most licensees are small businesses, these rule amendments apply to all licensees. The rule amendments expand on a presently required area of inspection for licensees and reflect modern practices. As these rules reflect modern practices and enhance fire safety measures related to smoke alarms, the Program foresees these rules as beneficial to licensees, their small businesses, and consumers.

A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the rule being proposed that may exist, and to what extent the alternative means might be less burdensome to small business;

The Program knows of no other less restrictive or burdensome means than through the promulgation of these rules as amended.

A comparison of the rule being proposed with any federal or state counterparts; and

Rules and regulations for home inspector programs across the country vary. However, it is likely the rule amendments are like current or proposed rules and regulations in other state-level jurisdictions. The Program is unaware of any similar existing or proposed federal rules.

Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the rule being proposed.

The Program does not foresee the need for a possible exemption of the requirements in the proposed rule amendments for small businesses. The rule amendments apply equally to all licensees, regardless of the size of their business. Therefore, the Program does not see a disparate impact to small businesses. Additionally, these rule amendments expand on current inspection requirements for all licensees that are applied equally. Therefore, an exemption for small businesses would not be beneficial.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, “On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues.”

The Home Inspector Licensing Program foresees no impact on any 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 proposed rule amendments update the home inspector standards of practice for smoke alarm reporting. Specifically, the rule amendments clarify the reporting requirements for licensees including indicating the presence or absence of smoke alarms, the area and location of the smoke alarms, whether smoke alarms appear more than ten (10) years from the date of manufacture, whether a replacement is required, and if so, require the licensee to make replacement recommendations of the same kind. Lastly, the proposed rule amendments provide licensees should direct requests for replacement battery-powered smoke alarms to the State Fire Marshal's Office.

- (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;

There are no known federal or state laws or regulations mandating promulgation.

- (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;

The rule would affect current and future licensees and applicants. Based on comments received since publication of the Notice of Rulemaking Hearing, the Program has received support and opposition from licensees. The Program has worked diligently to work with industry members and stakeholders to address any potential opposition, and believes the proposed final version are beneficial and necessary to effectuate the Program's initiatives as it relates to home inspections and smoke alarm safety and awareness. The Tennessee Home Inspector Licensing Program urges adoption of these rule amendments.

- (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;

There are no known opinions of the Attorney General and Reporter or any judicial rulings that directly relate to this rule.

- (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;

There is no foreseeable probable increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule.

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

Anna D. Matlock, Associate General Counsel for the Tennessee Home Inspector Licensing Program
Glenn Kopchak, Executive Director for the Tennessee Home Inspector Licensing Program

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

Anna D. Matlock, Associate General Counsel for the Tennessee Home Inspector Licensing Program
Glenn Kopchak, Executive Director for the Tennessee Home Inspector Licensing Program

- (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

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

There is no known additional relevant information.

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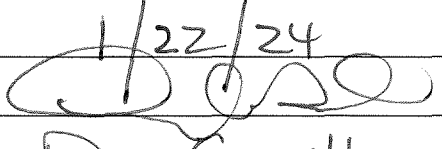
Filing Form for Stay of Effective Date on Rules, Withdrawal of Stay, and Withdrawal of Rules

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Home Inspector Licensing Program
Contact Person:	Doug Garrett
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Type of Action on Rule:☒ **Stay of Effective Date of Rules**Rule Filing Date: 11/9/2023Rule Original Effective Date: 02/07/2024Length of Stay (not to exceed 75 days): 45 daysNew Effective Date of Rule Filing: 03/23/2024☐ **Notice of Withdrawal of Stay**Stay Filing Date: (mm/dd/yyyy)Stay Effective Date: (mm/dd/yyyy)New Effective Date of Rule Filing: (mm/dd/yyyy)☐ **Notice of Withdrawal of Rules**Rule Filing Date: (mm/dd/yyyy)Rule Effective Date: (mm/dd/yyyy)


Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0780-05-12	Home Inspectors
Rule Number	Rule Title
0780-05-12-.10	Standards of Practice

Date: 1/22/24
Signature: 
Name of Officer: Doug Garrett
Title of Officer: Legislative Attorney

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Tre Hargett
Secretary of State

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