



State of Arkansas
Bureau of
Legislative Research

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Tim Carlock, Assistant Director
for Information Technology
Matthew Miller, Assistant Director
for Legal Services
Richard Wilson, Assistant Director
for Research Services

Memorandum

TO: ALC–Executive Subcommittee

FROM: Jessica C. Sutton, Administrator, Administrative Rules Review Section, Bureau of Legislative Research

CC: Marty Garrity, Director, Bureau of Legislative Research

DATE: May 5, 2017

SUBJECT: Legal Authorization for the Board of Electrical Examiners’ Proposed Emergency Rule

The Board of Electrical Examiners is empowered to adopt rules and regulations to establish statewide standards for the construction, installation, and maintenance of electrical facilities and the performance of electrical work. Ark. Code Ann. § 20-31-104(a). Pursuant to Arkansas Code Annotated § 20-31-104(b), the Board was required to adopt the National Electrical Code, 1990 edition, of the National Fire Protection Association. If there are updates and new editions to the National Electrical Code, the board, after notice and public hearing, shall adopt such changes and editions which it determines are necessary to ensure public health and safety. Ark. Code Ann. § 20-31-104(c).

The National Electrical Code (NEC) is updated every three (3) years. Arkansas is currently operating under the 2014 NEC. The board is planning to adopt the 2017 NEC through the regular promulgation process, but requests emergency approval with respect to one specific article, Article 691, which deals with large-scale photovoltaic (PV) power production facilities. According to the agency, a contractor is building a 600-acre solar power production facility in the Stuttgart area and has become concerned that Arkansas will not have the 2017 NEC adopted by the time that they begin their electrical work. Article 691 of the 2017 NEC has some new processes, methods, and technologies not available in the 2014 NEC. The board’s position is that, if the emergency rule is not approved, then the contractor will be faced with the choice of violating current rules or delaying a very large project with detrimental economic consequences.

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Arkansas Department of Labor
DIVISION Board of Electrical Examiners
DIVISION DIRECTOR Danny King, Chairman, and Ron Baker, Division Manager
CONTACT PERSON Denise P. Oxley, General Counsel, Arkansas Department of Labor
ADDRESS 10421 W. Markham Street, Little Rock, AR 72205
PHONE NO. 501-682-4502 FAX NO. 501-682-4535 E-MAIL denise.oxley@arkansas.gov
NAME OF PRESENTER AT COMMITTEE MEETING Denise P. Oxley
PRESENTER E-MAIL denise.oxley@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

**Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201**

1. What is the short title of this rule? Rule 010.13-008 The National Electrical Code

2. What is the subject of the proposed rule? Minimum standards for the performance of electrical work

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation. _____

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No
If yes, what is the effective date of the emergency rule? June 1, 2017

When does the emergency rule expire? 120 days

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? The emergency rule adopts only one article of the 2017 National Electrical Code. The board anticipates adopting the entire 2017 National Electrical Code under the regular permanent provisions of the Administrative Procedures Act.

Yes No

5. Is this a new rule? Yes No

If yes, please provide a brief summary explaining the regulation. A summary is attached.

Does this repeal an existing rule? Yes No

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes No

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."** See Attachment A and Attachment B.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Ark. Code Ann. § 20-31-104.

7. What is the purpose of this proposed rule? Why is it necessary? The purpose is to adopt one article, Article 691, of the 2017 National Electrical Code in order for a large scale project in Stuttgart to proceed. The Board will adopt the 2017 National Electrical Code in the normal promulgation process, but cannot wait with respect to this article dealing with large-scale photovoltaic (PV) power production facilities. This emergency rule will only apply to large-scale photovoltaic (PV) power production facilities. At present, the only one of which we are aware is the Stuttgart Solar PV Project being constructed by Mortenson Construction. They specifically approached the Board staff regarding this proposed emergency regulation to take advantage of new processes and methods not contained in the 2014 National Electrical Code, which is the current one adopted by the Board. They anticipate economies in terms of the costs of materials and installations.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).
<http://www.labor.arkansas.gov/Websites/labor/images/EditedJuneRegselectrical.pdf>

9. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
This emergency rule will be incorporated in a larger promulgation of the 2017 NEC. Those dates are not established at this time.

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

June 1, 2017

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. The agency will send written notice of the emergency rule to those on its interested party mailing list. It is Attachment C.

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). This is an proposed emergency rule and cannot be filed until after review by the Executive Subcommittee of the Legislative Council. Ark. Code Ann. § 25-15-204(c)(2).

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. The only party that we know to have an interest in the rule is Mortenson Construction. Contact information:

Ryan Johnson

Electrical Executive

Mortenson Construction

700 Meadow Lane North

Minneapolis, MN 55422-4899

(612) 849-2081

ryan.johnson@mortenson.com

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Labor

DIVISION Board of Electrical Examiners

PERSON COMPLETING THIS STATEMENT Denise P. Oxley, General Counsel

TELEPHONE 501-682-4502 **FAX** 501-682-4535 **EMAIL:** denise.oxley@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Rule 010.13-008 The National Electrical Code

- 1. Does this proposed, amended, or repealed rule have a financial impact? Yes No

- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No

- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;

(b) The reason for adoption of the more costly rule;

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total -0-

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total -0-

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected. This emergency rule will only apply to large-scale photovoltaic (PV) power production facilities. At present, the only one of which we are aware is the Stuttgart Solar PV Project being constructed by Mortenson Construction. They specifically approached the Board staff regarding this proposed emergency regulation to take advantage of new processes and methods not contained in the 2014 National Electrical Code, which is the current one adopted by the Board. They anticipate economies in terms of the costs of materials and installations.

Current Fiscal Year

\$ -0-

Next Fiscal Year

\$ -0-

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

The costs will be the same for any public sector entity as for a private sector entity.

Current Fiscal Year

\$ -0-

Next Fiscal Year

\$ -0-

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Mark-up Copy. Stricken language would be deleted from and underlined language would be added to the regulations as effective April 21, 2016.

**ADMINISTRATIVE REGULATIONS OF
THE BOARD OF ELECTRICAL EXAMINERS,
STATE OF ARKANSAS**

**010.13 Administrative Regulations of the Board of Electrical Examiners of the State of
Arkansas**

Amendment 1. Amend Rule 010.13-008 (A) and (B), dealing with the National Electrical Code, to read as follows:

010.13-008 The National Electrical Code

A. The Board hereby adopts and incorporates herein the National Electrical Code, 2014 edition of the National Fire Protection Association.

B. The National Electrical Code, 2014, shall be the standard for the construction, installation, repair, and maintenance of electrical facilities and the performance of electrical work.

1. Notwithstanding the provisions of the 2014 National Electrical Code, arc fault circuit interrupters shall not be required in kitchens and laundry rooms.

2. The Board hereby adopts and incorporates herein Article 691, Large-Scale Photovoltaic (PV) Power Production Facility, of the 2017 National Electrical Code.

Amendment 2. Amend Rule 010.13-022 to read as follows:

010.13-023 Effective Date, Repealer and History.

A. Effective June 1, 2008 all previous regulations promulgated by the Board are hereby repealed.

B. The effective date of these regulations is June 1, 2008.

C. History

Attachment A

1. The Board of Electrical Examiners first promulgated regulations effective September 12, 1979. These regulations were amended effective October 15, 1987.

2. All previous rules and regulations of the Board were repealed and new rules and regulations were adopted effective January 1, 1992. These regulations were amended effective January 19, 1993; September 29, 1993; January 15, 1996; June 1, 1999; and July 1, 1999

3. All previous rules and regulations of the Board were repealed and new rules and regulations were adopted effective September 1, 1999. These regulations were amended effective August 20, 2001; January 1, 2002; April 1, 2002; April 1, 2004; November 1, 2004; October 1, 2005; and June 1, 2006.

4. All previous rules and regulations of the Board of Electrical Examiners were repealed and new rules and regulations were adopted effective June 1, 2008. [Note: Rule 010.13-019 was amended effective September 1, 2008 by adding subsection (E)].

5. Regulations 010.13-009, 010.13-011, and 010.13-012 pertaining to Specialist Sign Electricians and examination fees were amended by emergency regulation effective July 31, 2009. These changes were adopted as permanent regulations effective February 1, 2010. Regulation 010.13-012(H)(5) was also added by the permanent regulation.

6. Effective September 15, 2011 the following Rules were amended: Rule 010.13-008(B)(to update the National Electrical Code to the 2011 edition).

7. Regulation 010.13-021 pertaining to the licensure of electrical inspectors, was adopted with an effective date of February 10, 2014.

8. Effective November 21, 2014, Rule 010.13-008 was amended to update the National Electrical Code to the 2014 edition, with certain exceptions (dealing with arc fault circuit interrupters in kitchen and laundry rooms.

9. Effective January 1, 2016, the following Rules were amended: Rule 010.13-002 (Information for public guidance); Rule 010.13-004 (Rule-making); Rule 010.13-005 (Emergency rule-making); Rule 010.13-009 (Definitions); and Rule 010.13-013 (Licenses). A new rule was adopted effective January 1, 2016, Rule 010.13-022 (Active duty service members, returning military veterans, and spouses).

10. Effective June 1, 2017, Rule 010.13-008 was amended to adopt Article 691, Large-Scale Photovoltaic (PV) Power Production Facility, 2017 edition of the National Electrical Code as an emergency rule.

EMERGENCY CLAUSE. It is found by the Board of Electrical Examiners that the 2014 National Electrical Code, which is the current Code adopted by the Board, does not contain the most recent provisions to deal with the new technologies for large-scale photovoltaic (PV) electric power production facilities; that there are currently contracts in place and work has begun on a large-scale photovoltaic (PV) electric power production facility in Arkansas County;

Attachment A

that any delay in work would be detrimental to the economic development of the State; and that the adoption of Article 691 of the 2017 National Electrical Code is necessary to protect against that imminent peril to the public welfare.

**SUMMARY OF PROPOSED EMERGENCY AMENDMENT TO THE
RULES OF THE BOARD OF ELECTRICAL EXAMINERS,
STATE OF ARKANSAS**

Arkansas Department of Labor
May 2, 2017

Rule 010.13-008. This Rule would be amended to adopt Article 691 of the National Electrical Code, 2017 edition of the National Fire Protection Association, relating to Large-Scale Photovoltaic (PV) Power Production Facility.

Rule 010.13-023. The Rule reflecting the history and effective dates of the Board's rules would be amended to include the foregoing with an effective date of June 1, 2017.

EMERGENCY CLAUSE. It is found by the Board of Electrical Examiners that the 2014 National Electrical Code, which is the current Code adopted by the Board, does not contain the most recent provisions to deal with the new technologies for large-scale photovoltaic (PV) electric power production facilities; that there are currently contracts in place and work has begun on a large-scale photovoltaic (PV) electric power production facility in Arkansas County; that any delay in work would be detrimental to the economic development of the State; and that the adoption of Article 691 of the 2017 National Electrical Code is necessary to protect against that imminent peril to the public welfare.

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Attachment D

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