

Mark-up Copy. Stricken language would be deleted from and underlined language would be added to the regulations, as they existed on November 1, 2004.

Regulation 1. The National Electrical Code.

- 1.1 The Board hereby adopts and incorporates herein the National Electrical Code, ~~2002~~ 2005 edition of the National Fire Protection Association, effective as of ~~January~~October 1, ~~2002~~ 2005.
- 1.2 The National Electrical Code, ~~2002~~ 2005, shall be the standard for the construction, installation, repair, and maintenance of electrical facilities and the performance of electrical work.
- 1.3 In the event there are updates and new editions to the National Electrical Code, the Board shall, after notice and public hearing, adopt such changes and editions which it determines are necessary to insure the public health and safety.
- 1.4 The statewide standards shall guarantee a uniform minimum standard for the construction, installation, and maintenance of electrical facilities and for the performance of electrical work.

Regulation 9 . Electrical Civil Monetary Penalties

- 9.1 Civil Penalties, Generally.
 - a. Any person, firm, or corporation that violates provisions of Ark. Code Ann. § 17-28-101 through 310 or Ark. Code Ann. § 20-31-101 through 20-31-105; or any rule, regulation, or order promulgated by the Board; or any condition of a license, certificate, or registration issued by the Board shall be subject to a civil penalty that shall not exceed the following:
 - (1) Two hundred fifty dollars (\$250.00) for a first offense;
 - (2) Seven hundred fifty dollars (\$750.00) for a second offense;
 - (3) One thousand dollars (\$1000.00) for a third offense
 - b. Each day of a continuing violation shall constitute a separate offense.
 - c. Assessment of a civil penalty shall be made no later than two (2) years from the date of the occurrence of the violation.
 - d. The amount of civil penalties will be determined in accordance with 9.2 of this Regulation.

- e. In civil penalty cases, the staff of the Electrical Division of the Arkansas Department of Labor shall notify the person, firm, or corporation charged with the violation by Regular Mail of the following:
- (1) the type of violation(s)
 - (2) the date(s) of the violation(s)
 - (3) the amount of the recommended civil penalty for the violation(s)
 - (4) ~~a statement of the time, date, place, and nature of the hearing before the Board.~~
 - (5) ~~A statement of the legal authority and jurisdiction under which the hearing is to be held;~~
 - (6) ~~A short and plain statement of the matters of fact and law asserted;~~
 - (7) ~~A statement that the person, firm, or corporation may, upon written request, obtain the issuance of a subpoena by the Director for the attendance and testimony of witnesses and the production of documents.~~
- (4) the civil penalty determination issued by the Electrical Division staff shall be final, unless within twenty (20) days after receipt of this notice, the person, firm, or corporation notifies the Director in writing that the person, firm, or corporation contests the penalty; and
- (5) the procedure for contesting a civil penalty as provided in 9.5 of this Regulation.
- f. If the person, firm, corporation, partnership, or association charged with the violation has not filed written notice with the Director that the charged party contests the civil penalty within twenty (20) days after receiving notice in accordance with 9.1(e) of this Regulation, the penalty assessment by the Electrical Division staff shall become the final determination of the Director.
- fg. Notice of the civil penalty ~~hearing~~ may also be delivered in the same manner as summons in civil cases or by hand-delivered citation by an electrical inspector of the Arkansas Department of Labor.
- g. ~~Any person, firm or corporation who is given notice of a recommended fine shall be provided at least twenty (20) days notice of the hearing at the address on file with the Department of Labor or at their last known address.~~

9.2 Civil Penalty Assessment.

- a. If upon inspection or investigation, the Arkansas Department of Labor finds that a person, firm, or corporation has violated any of the provisions of Ark. Code Ann. § 17-28-101 through 310 or Ark. Code Ann. § 20-31-101 through 20-31-105; or any rule, regulation, or order promulgated by the Board; or any condition of a license, certificate, or registration issued by the Board, such person, firm or corporation shall be subject to a civil penalty that shall not exceed the following:
 - (1) Two hundred fifty dollars (\$250.00) for a first offense;
 - (2) Seven hundred fifty dollars (\$750.00) for a second offense; and
 - (3) One thousand dollars (\$1000.00) for a third offense
- b. The ~~recommended~~ amount of a civil penalty will be based on the Violation Fine Schedule in 9.3 of this Regulation.
- c. The Violation Fine Schedule is only a guideline to assist in consistent application of civil monetary penalties. The Board shall only be bound by the statutory fine scale described in Ark. Code Ann. § 17-28-309(b)(2).
- d. ~~Upon appeal, the~~ The Board may exercise its discretion in determining the appropriate penalty according to the Violation Fine Schedule in 9.3 of this Regulation. In determining the amount of a civil monetary penalty, the Board may consider:
 - (1) The degree and extent of harm to the public safety or to property, or the potential for harm;
 - (2) The duration and gravity of the violation;
 - (3) Whether the violation was committed willfully or intentionally, or reflects a continuing pattern;
 - (4) Whether the violation involved elements of fraud or deception either to the public or to the Board, or both;
 - (5) The violator's prior disciplinary record with the Board;
 - (6) Whether and to the extent which the violator profited by the violation.
- e. ~~Any person, firm, or corporation that pays a recommended fine before the date of the hearing scheduled before the Board, shall be presented to the Board as an uncontested matter for approval.~~
- ef. No civil penalty assessments older than two (2) years shall be used as the basis for a

progressive discipline pursuant to the Violation Fine Schedule in Regulation 9.3.

- fg. No provision of this subsection shall abridge authority of the Board to evaluate all past civil money assessments by any person, firm, or corporation to revoke or suspend any license for any offense.

9.5 ~~Hearings and Appeals.~~ Contesting a Civil Penalty

- a. The person, firm, or corporation may contest the imposition of a civil penalty by filing a written request for a hearing with the Director, 10421 West Markham, Little Rock, Arkansas 72205. The written request must be made within twenty (20) days after receipt of notification of the civil penalty or the assessment will become final.
- b. A written request for a hearing shall be scheduled for a hearing before the Board.
- c. The person, firm, or corporation shall be provided at least twenty (20) days notice of the hearing. Such notice shall include:
 - (1) a statement of the time, date, place, and nature of the hearing;
 - (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
 - (3) a short and plain statement of the matters of fact and law asserted; and
 - (4) a statement that the person, firm, or corporation may, upon written request, obtain the issuance of a subpoena by the Director for the attendance and testimony of witnesses and the production of documents.
- d. The Board shall, after consideration of the evidence, issue a decision and issue an order setting forth findings of fact and conclusions of law. Such decision shall become the final determination of the Board, unless judicial review is sought within thirty (30) days pursuant to the Administrative Procedures Act, Ark. Code Ann. § 25-15-212.
- e. If any person, firm, or corporation against whom a civil penalty has been imposed fails to pay the penalty within sixty (60) days of the final determination, the Director of the Arkansas Department of Labor may file an action in a court of competent jurisdiction to collect the civil penalty, without paying costs or giving bonds for costs.

Regulation 15. Effective Date and Repealer.

15.1 Effective September 1, 1999 all previous regulations promulgated by the board are hereby repealed.

15.2 The effective date of these regulations is September 1, 1999.

NOTE: Regulations 1, 6.2 and 7.9 were amended effective January 1, 2002, and 6.7 was effective April 1, 2002.

NOTE: Regulations 5.3, 5.5, 6.1, 6.2, 6.4, 7.5, 7.7, 7.9, 8.3, 8.4, 8.5, 11.6, 12.6 were amended effective April 1, 2004. Regulation 9 was a new regulation effective April 1, 2004. Subsequent Regulations were renumbered on this date.

NOTE: Regulations 6.2, 6.5, 7.9, 7.10, 8.7, 9.1 – 9.5 were amended effective November 1, 2004.

NOTE: Regulations 1.1, 9.1, 9.2, 9.5 were amended effective October 1, 2005

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT: ARKANSAS DEPARTMENT OF LABOR
DIVISION: ARKANSAS BOARD OF ELECTRICAL EXAMINERS
PERSON COMPLETING THIS: DANIEL K. FAULKNER
STATEMENT: _____
TELEPHONE NO.: (501) 682-4504 **FAX NO.:** (501) 682-4535
EMAIL ADDRESS: daniel.faulkner@mail.state.ar.us

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE

Board of Electrical Examiners, Rules 1 and 9

1. Does this proposed, amended, or repealed rule or regulation have a financial impact?
Yes **X** No
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain: The change to the Board appeal structure in Regulation 9 will have no financial impact, it is simply a procedural administrative change. The adoption of the 2005 National Electrical Code in Regulation 1 will cause some financial impact. There will be no impact to existing structures. The primary impact will be upon new commercial construction. However, the cost is too speculative to estimate because of the unlimited variety in size and scope of individual construction projects. There should be minimal, if any, cost to new residential construction.
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.

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-

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation, and explain how they are affected. The amendment to Regulation 7 will result in a cost savings for electrical contractors.

Current Fiscal Year

\$ -0-

Next Fiscal Year

\$ -0-

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

Current Fiscal Year

\$ -0-

Next Fiscal Year

\$ -0-