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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. TCA Section 4-5-205

Agency/Board/Commission:	Tennessee Real Estate Appraiser Commission
Division:	
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1255-08	Appraisal Management Company Registration and Regulation
Rule Number	Rule Title
1255-08-.01	Registration Application Requirements
1255-08-.02	Background Checks
1255-08-.03	Denial of Registration
1255-08-.04	Registration Renewal
1255-08-.05	Federal Appraiser Registry
1255-08-.06	Filing of Documents
1255-08-.07	Administrative Penalties

Chapter 1255-08
 Appraisal Management Company Registration and Regulation

New Rules

- 1255-08-.01 Registration Application Requirements
 1255-08-.02 Background Checks
 1255-08-.03 Denial of Registration
 1255-08-.04 Registration Renewal
 1255-08-.05 Federal Appraiser Registry
 1255-08-.06 Filing of Documents
 1255-08-.07 Administrative Penalties

1255-08-.01 Registration Application Requirements

- (1) An applicant for registration as an Appraisal Management Company or an entity that is exempt from the registration requirements pursuant to T.C.A. § 62-39-404(1) must submit a written application on the prescribed form. The application shall include the following information and certifications:
 - (a) The name, business address, telephone number and email address of the person or entity seeking registration.
 - (b) Designation of an agent for service of process within the state and an irrevocable Uniform Consent to Service of Process.
 - (c) If the entity is not a corporation that is domiciled in this state, the name and contact information for the company's agent for service of process in this state.
 - (d) The name, address and contact information for any individual or entity owning ten percent (10%) or more of the Appraisal Management Company.
 - (e) The name, address and contact information for an individual designated as the controlling person.
 - (f) Certification that the controlling person had never been convicted of a criminal act involving moral turpitude nor had a license or certificate to act as an appraiser refused, revoked or surrendered in lieu of disciplinary action in any state.
 - (g) Certification that the Appraisal Management Company is not more than ten percent (10%) owned by an individual or entity that has had an appraiser license, certification or registration denied, revoked or suspended subject to a disciplinary proceeding in any state.
- (2) A registration fee of two thousand dollars (\$2,000.00) is required at the time of application.
- (3) The applicant shall post with the Commission at the time of application a surety bond in the amount of twenty thousand dollars (\$20,000.00).
 - (a) The bond shall accrue to the State for the benefit of a claimant against the registrant to secure the performance of the registrant's obligation.
 - (b) Any claims reducing the face amount of the bond must be restored at the time of the biennial renewal.
- (4) Upon completion of the registration application and payment of all fees the Commission shall issue the registrant a unique registration number and shall publish a list of all registered Appraisal Management Companies.

Authority: T.C.A. §§ 62-39-403, 62-39-407, 62-39-408, 62-39-409, 62-39-410 and 62-39-423.

1255-08-.02 Background Checks.

Any individual owning more than ten percent (10%) of the Appraisal Management Company or any individual designated as the controlling person of the Appraisal Management Company shall submit a background check at time of application.

Authority: T.C.A. §§ 62-39-409 and 62-39-410.

1255-08-.03 Denial of Registration

- (1) An Appraisal Management Company denied registration shall be notified in writing by the Commission of such denial and the reasons therefor. Such applicant may request an informal conference with the Commission to reconsider such denial at its next scheduled meeting. Such request must be sent to the Commission office within thirty (30) days of the date of the notice of denial.
- (2) Nothing in this rule shall be construed as creating the right to a contested case proceeding (as defined by the Tennessee Administrative Procedures Act, T.C.A. Title 4, Chapter 5) if a registration is denied an applicant.

Authority: T.C.A. §§ 62-39-203, 62-39-204 and 62-39-333.

1255-08-.04 Registration Renewal

- (1) A registration shall expire two (2) years following the date of issuance.
- (2) To obtain renewal of a registration, the holder of a current, valid registration must make application on the prescribed form no later than thirty (30) days prior to the expiration of the registration then held.
- (3) An application for renewal must be accompanied by the two thousand dollar (\$2,000.00) registration renewal fee plus the applicable federal registry fee.
- (4) Failure to renew the registration prior to expiration will result in the loss of authority to operate as an Appraisal Management Company in Tennessee until a request for reinstatement has been processed by the Commission. A late penalty fee of one hundred dollars (\$100.00) per month, or portion thereof, of delinquency must be paid prior to reinstatement in addition to the registration renewal fees.

Authority: T.C.A. §§ 62-39-403 and 62-39-408.

1255-08-05 Federal Appraiser Registry.

Registrants who are qualified for enrollment in the federal roster or registry of Appraisal Management Companies must apply for enrollment or reinstatement of such enrollment in same upon a form approved by the Commission accompanied by the fee established for that purpose by the appropriate federal agency or instrumentality.

Authority: T.C.A. § 62-39-333.

1255-08-.06 Filing of Documents

- (1) Registrants must file the biannual certification required pursuant to T.C.A. §§ 62-39-414, 62-39-415, 62-39-416 and 62-39-417 every one hundred and eighty (180) days beginning on the date of registration issuance.
- (2) When documents are remitted to the office of the Tennessee Real Estate Appraiser Commission by mail for filing, the date of filing shall be determined by the official postmark on such mail.

Authority: T.C.A. §§ 62-39-414, 62-39-415, 62-39-416 and 62-39-417.

1255-08-.07 Administrative Penalties.

- (1) With respect to any registrant, the Commission may in addition to or in lieu of any other lawful disciplinary action, assess an administrative penalty against such registrant for each separate violation of a statute, rule or order pertaining to the Commission in accordance with the following schedule:

Violation	Penalty
(a) T.C.A. § 62-39-411	\$50 - \$1,000
(b) T.C.A. § 62-39-412	\$50 - \$1,000
(c) T.C.A. § 62-39-413	\$50 - \$1,000
(d) T.C.A. § 62-39-414	\$50 - \$1,000
(e) T.C.A. § 62-39-415	\$50 - \$1,000
(f) T.C.A. § 62-39-416	\$50 - \$1,000
(g) T.C.A. § 62-39-417	\$50 - \$1,000
(h) T.C.A. § 62-39-418	\$50 - \$1,000
(i) T.C.A. § 62-39-419	\$50 - \$1,000
(j) T.C.A. § 62-39-420	\$50 - \$1,000
(k) T.C.A. § 62-39-421	\$50 - \$1,000
(l) T.C.A. § 62-39-422	\$50 - \$1,000
(m) T.C.A. § 62-39-424	\$50 - \$1,000
(n) T.C.A. § 62-39-425	\$50 - \$1,000
(o) Rule 1255-08-.01	\$50 - \$1,000
(p) Commission Order	\$50 - \$1,000

- (2) With respect to any person or entity required to be registered in this state as an Appraisal Management Company (regardless of whether the person or entity is actually licensed or certified), the Commission may assess an administrative penalty against such person or entity for each separate violation of a statute in accordance with the following schedule:

Violation	Penalty
(a) T.C.A. § 62-39-403	\$100 - \$1,000

- (3) Each day of continued violation may constitute a separate violation.
- (4) In determining the amount of administrative penalty to be assessed pursuant to this rule, the Commission may consider such factors as the following:
- (a) Whether the amount imposed will be substantial economic deterrent to the violation;
 - (b) The circumstances leading to the violation;
 - (c) The severity of the violation and the risk of harm to the public;
 - (d) The economic benefits gained by the violator as a result of noncompliance; and
 - (e) The interest of the public.

Authority: T.C.A. §§ 56-1-308, 62-39-411, 62-39-412, 62-39-413, 62-39-418, 62-39-419, 62-39-420, 62-39-421, 62-39-422, 62-39-424 and 62-39-425.

* 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)
Mark Headden	X				
Bobby Flowers	X				
Herbert Phillips	X				
Rick Carter	X				
Nancy Point	X				
Jack Wade	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Real Estate Appraiser Commission on January 10, 2011, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/19/2010

Rulemaking Hearing(s) Conducted on: (add more dates). 01/10/2011

Date: May 3, 2011

Signature: Aminah Peay Saunders

Name of Officer: Aminah Peay Saunders

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: May 3, 2011

Notary Public Signature: Gacey Cook

My commission expires on: May 6, 2013

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PUBLICATIONS



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.

Robert E. Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter
5-20-11
Date

Department of State Use Only

Filed with the Department of State on: 5/24/11

Effective on: 8/22/11

Tre Hargett
Tre Hargett
Secretary of State

Public Hearing Comments

Rule 1255-08-.01 Registration Application Requirements

On January 6, 2011 Counsel received an email comment from Candie Donovan of USAAppraisals.biz. Ms. Donovan states, "As a small business we understand the background check, references, surety bond and requiring E&O. However, the fees that each state are starting to require is unreasonable. We handle appraisal work in the entire US, if every state required a fee similar to yours we could not even be in business. The government has set the requirement of HVCC which requires the use of appraisal management companies for most lenders to manage the correspondence between the lender and appraiser. We are all struggling to maintain our business."

Counsel failed to read the comment from Ms. Donovan at the January 14, 2011 Rulemaking Hearing. At the February 14, 2011 Commission meeting Counsel read the above comment to the Commission members and asked for any comments from the Commission.

In response to the comment, Commissioner Headden stated that it is his understanding that HVCC expired November of 2010 and the registration fee is one thousand dollars (\$1000.00) per year. Commissioner Wade stated that appraisers are required to pay fees and he does not think the proposed fees are unrealistic or unfair. Chairman Carter asked how our proposed fees compare to fees being charged in other states. The Administrative Director, Nikole Avers, responded that the two thousand dollar (\$2,000.00) registration fee is average. Ms. Avers further states that the dollar figure was arrived at by estimating that one hundred (100) AMC's would register. Ms. Avers further states that the program must set the registration fee at a number that will allow the program to be self sufficient.

The Commission voted to adopt Rule 1255-08-.06 as published in the Notice of Rulemaking.

Rule 1255-08-.02 Background Checks

Mr. Randy Button of The Capitol Strategy Group and representative for Tennessee real estate appraisers addressed the Commission at the Rulemaking Hearing. Mr. Button stated that it is customary to submit a background check as part of the application process. Mr. Button suggested that the rule be written to state that all AMC registrants must submit a background check as part of the application process. Mr. Button stated that requiring a background check of all AMC registrants would reduce any subjectivity regarding who would be required to submit to background checks and under what circumstances.

In response to this comment the Commission voted to amend the proposed Rule to require all AMC registrants to submit a background check at the time of registration. The amended Rule will read, "Any individual owning more than ten (10) percent of the Appraisal Management Company or any individual designated as the controlling person of the Appraisal Management Company shall submit a background check at time of application."

Rule 1255-08-.06 Filing of Documents

Mr. Randy Button of The Capitol Strategy Group and representative for Tennessee Real Estate Appraisers addressed the Commission at the Rulemaking Hearing. Mr. Button suggested that the Commission drill down a little deeper into exactly what the reporting criteria would be so the Commission would have some assurance that the requirements of the statute are being met.

Legal counsel responded that the Commission could address the specific details of the certifications at a Commission meeting but that the Rule as written provides a framework that requires the registrants to make biannual certifications.

The Commission voted to adopt Rule 1255-08-.06 as published in the Notice of Rulemaking.

Rule 1255-08-.07 Administrative Penalties

Mr. Randy Button of The Capitol Strategy Group and representative for Tennessee real estate appraisers addressed the Commission at the Rulemaking Hearing. Mr. Button asked whether it was the intention of the Commission to provide that violations of T.C.A. § 62-39-414, 62-39-415, 62-39-416, and 62-39-417 would have

no administrative penalties associated with those sections. The sections to which Mr. Button referred require biannual certifications regarding individuals being added to the appraiser panel, licensure of appraisers on an existing panel, system for periodic review of licensure and maintenance of detailed records.

The Commission voted to amend the Rule to include administrative penalties for failure to comply with T.C.A. §§ 62-39-414, 62-39-415, 62-39-416, and 62-39-417.

Regulatory Flexibility Addendum

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Description of Proposed Rule:

The proposed Rules require the registration of entities operating as Appraisal Management companies in Tennessee. Pursuant to the proposed Rules all Appraisal Management Companies will be required to submit an application containing contact information for the Appraisal Management Company and its personnel, the execution of an irrevocable Uniform Consent to Service of Process, the designation of a controlling person, certain certifications regarding the criminal and licensure history of the individual owners and the controlling person, an initial registration fee of two thousand dollars (\$2,000.00) and the posting of a surety bond in the amount of twenty thousand dollars (\$20,000.00). Individuals owning more than ten (10%) percent of the Appraisal Management Company or the designated controlling person must submit a background check as part of the application for registration. An Appraisal Management company denied registration may request an informal conference with the Commission to reconsider such denial. The Appraisal Management Company registration shall expire two (2) years from the date of issue. To renew, Appraisal Management Companies shall complete the prescribed form and pay a fee in the amount of two thousand dollars (\$2,000.00). An Appraisal Management Company that fails to renew before registration expiration shall lose the authority to operate as an Appraisal Management Company in Tennessee. The Appraisal Management Company shall apply for enrollment or renewal in the federal roster or registries of Appraisal Management Companies upon a form prescribed by the Commission and submit all fees as required. The Appraisal Management Company shall submit biannual certifications regarding individuals being added to the appraiser panel, licensure of appraisers on an existing panel, system for periodic review of licensure and maintenance of detailed records. The Commission shall have authority to impose administrative penalties of fifty dollars (\$50.00) to one thousand dollars (\$1000.00) for violations of Tennessee law and Commission rules. In determining the amount of any penalties the Commission shall consider certain factors including whether the amount imposed will be a substantial economic deterrent, the circumstances surrounding the violation, the severity of the violation, the economic benefit gained by the violator and the interest of the public.

Regulatory Flexibility Analysis - Methods of Reducing Impact of Rules on Small Businesses:

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

There will be no overlap, duplication, or conflict with other federal, state or local governmental rules. The proposed rules should work in concert with the federal regulatory requirements to achieve the minimum regulatory scheme contemplated by the Dodd Frank Wall Street Reform and Consumer Act which amended Title XI of FIRREA. The amendments to FIRREA require that the Appraisal Subcommittee (ASC) shall monitor the requirements established by the states for the registration and supervision of the operations and activities of Appraisal Management Companies. The ASC will also maintain a national registry of certain Appraisal Management Companies that are either registered with and subject to supervision of a State appraiser certifying and licensing agency or are operating subsidiaries of a federally regulated financial institution.

2. Clarity, conciseness, and lack of ambiguity in the rules:

The rules are clear in purpose and intended execution. The rules are not open to different interpretations.

3. Flexible compliance and/or reporting requirements for small businesses:

In order to ensure the health, safety and welfare of the citizens of Tennessee, it is imperative that small businesses organized as Appraisal Management Companies are held to the registration requirements as contemplated by T.C.A. § 62-39-404.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

In order to ensure the health, safety and welfare of the citizens of Tennessee, it is imperative that small businesses organized as Appraisal Management Companies are held to the registration requirements as

contemplated by T.C.A. § 62-39-404.

5. Consolidation or simplification of compliance or reporting requirements:

The Commission staff is working towards the development of uniform applications and forms that will be available online to simplify and expedite the registration and renewal process.

6. Performance standards for small businesses:

The Department expects all Appraisal Management Companies to follow the new registration and regulation requirements.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The filing fees were calculated by taking into account the anticipated cost of operating the registration program and analyzing similar fees currently charged in other states.

Economic Impact Statement:

1. Types of small businesses directly affected:

All small businesses operating as an Appraisal Management Company in Tennessee will be affected by the proposed rules.

2. Projected reporting, recordkeeping, and other administrative costs:

There will be alterations in small business reporting and recordkeeping. The small businesses will be required to make certain certifications and maintain records regarding certain appraisal assignments however it is anticipated that the requirements will not present significant additional cost.

3. Probable effect on small businesses:

There will be an increase in cost to small businesses operating as Appraisal Management Companies, specifically a two thousand dollar (\$2000.00) registration fee and a two thousand dollar (\$2000.00) renewal fee. Administrative penalties may be assessed against Appraisal Management Companies found to be in violation of Tennessee law or Commission rules. In addition, Appraisal Management Companies are required to post a surety bond in the amount of twenty thousand dollars.

4. Less burdensome, intrusive, or costly alternative methods:

The proposed changes to the existing rules are minimally burdensome/intrusive to small businesses. The necessary costs of the regulation are offset by the protections provided to citizens of Tennessee.

5. Comparison with federal and state counterparts:

There are no federal counterparts. There are many states in the process of developing rules to implement their recently enacted Appraisal Management Company legislation. Currently, Indiana and Arkansas require a five hundred dollar (\$500.00) registration fee per year. Georgia and Oklahoma require a one thousand dollar (\$1000.00) registration fee per year and California is one thousand six hundred dollars (\$1600.00) per year.

6. Effect of possible exemption of small businesses:

In order to ensure the health, safety and welfare of the citizens of Tennessee, it is imperative that small businesses are held to the same standards as larger businesses offering Appraisal Management Services in Tennessee.

Impact on Local Governments

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

The Rules will not have an impact on local government.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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 Rules require the registration of entities operating as Appraisal Management companies in Tennessee. Pursuant to the proposed Rules all Appraisal Management Companies will be required to submit an application containing contact information for the Appraisal Management Company and its personnel, the execution of an irrevocable Uniform Consent to Service of Process, the designation of a controlling person, certain certifications regarding the criminal and licensure history of the individual owners and the controlling person, an initial registration fee of two thousand dollars (\$2,000.00) and the posting of a surety bond in the amount of twenty thousand dollars (\$20,000.00). Individuals owning more than ten (10%) percent of the Appraisal Management Company or the designated controlling person must submit a background check as part of the application for registration. An Appraisal Management company denied registration may request an informal conference with the Commission to reconsider such denial. The Appraisal Management Company registration shall expire two (2) years from the date of issue. To renew, Appraisal Management Companies shall complete the prescribed form and pay a fee in the amount of two thousand dollars (\$2, 0000.00). An Appraisal Management Company that fails to renew before registration expiration shall lose the authority to operate as an Appraisal Management Company in Tennessee. The Appraisal Management Company shall apply for enrollment or renewal in the federal roster or registries of Appraisal Management Companies upon a form prescribed by the Commission and submit all fees as required. The Appraisal Management Company shall submit bi annual certifications regarding individuals being added to the appraiser panel, licensure of appraisers on an existing panel, system for periodic review of licensure and maintenance of detailed records. The Commission shall have authority to impose administrative penalties of fifty dollars (\$50.00) to one thousand dollars (\$1000.00) for violations of Tennessee law and Commission rules. In determining the amount of any penalties the Commission shall consider certain factors including whether the amount imposed will be a substantial economic deterrent, the circumstances surrounding the violation, the severity of the violation, the economic benefit gained by the violator and the interest of the public.

- (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;

Tennessee Code Annotated § 62-39-203 provides that the Commission "shall adopt rules and regulations in aid or in furtherance of this chapter."

- (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;

Appraisers licensed in Tennessee and Appraisal Management Companies operating in Tennessee are most directly affected by the proposed Rules. The agency believes that most appraisers would urge the adoption of the Rules and that the Appraisal Management Companies would likely reject the Rules.

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

There are no attorney general opinions or any judicial rulings that directly relate to the 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;

These rules are expected to have a fiscal impact on the Department; however, the collection of registration fees

are expected to offset any costs incurred to the Department.

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

Nikole Avers, Administrative Director, Tennessee Real Estate Appraiser Commission
Aminah Peay Saunders, Assistant General Counsel, Department of Commerce and Insurance

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

Nikole Avers, Administrative Director, Tennessee Real Estate Appraiser Commission
Aminah Peay Saunders, Assistant General Counsel, Department of Commerce and Insurance

- (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.