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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 Motor Vehicle Commission
Division:	Department of Commerce and Insurance
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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
0960-01	General Rules
Rule Number	Rule Title
0960-01-.01	Definitions
0960-01-.03	Warranty Charges and Sales Incentive Audits
0960-01-.08	Dealer Applications
0960-01-.11	Inspection of Business Records
0960-01-.14	License Fees
0960-01-.17	Motor Vehicle Shows
0960-01-.21	Motor Vehicle Dealer Facilities

Chapter Number	Chapter Title
0960-05	Automotive Mobility Dealer License
Rule Number	Rule Title
0960-05-.01	Sales Tax ID Number
0960-05-.02	City and County Business License
0960-05-.03	Liability Insurance and Worker's Compensation
0960-05-.04	Primary Business Activity
0960-05-.05	Signs
0960-05-.06	Automotive Mobility Dealer Facilities
0960-05-.07	Reasonable Business Hours
0960-05-.08	Automotive Mobility Dealer Applications and Requirements
0960-05-.09	Denial, Suspension or Revocation of License

Chapter 0960-01
General Rules
Amendments

Rule 0960-01-.01 Definitions is amended by adding the following paragraph, so that as amended the additional paragraph will read as follows:

- (8) the term "sales incentive" shall mean a payment made or other benefit provided by a manufacturer or distributor pursuant to a program to incentivize the retail sale of a vehicle or vehicles distributed by the manufacturer or distributor. Without limiting the foregoing, each of the following is an example of a Sales Incentive: (1) a payment made or a benefit provided by a manufacturer or distributor for which a buyer of a vehicle from a dealer becomes eligible as a result of purchasing a vehicle, whether the payment or benefit is given to the buyer or to another based on assignment of the right thereto by the buyer of a vehicle; (2) a payment made or benefit provided by a manufacturer or distributor to a dealer because of the dealer's sale of a vehicle; (3) a payment made or a benefit provided by a manufacturer or distributor to a dealer for a dealer's sale of multiple vehicles to meet a goal or objective of a manufacturer or distributor's program; (4) a payment made or a benefit provided by a manufacturer or distributor to a dealer for a dealer's sale of a vehicle or sales of vehicles where the amount of compensation or benefit is determined based on a dealer's sales in comparison to a goal or goals of a manufacturer or distributor's program; and/or (5) a payment made or benefit provided by a manufacturer or distributor to a dealer or the customer on account of the customer's status as an employee of the manufacturer or distributor, a relative of an employee of the manufacturer or distributor, a supplier to the manufacturer or distributor, or as a former customer of the brand, or as a payment or other benefit given to a buyer who currently owns a competing brand as an inducement to purchase a vehicle.

Authority: T.C.A. § 55-17-107.

Rule 0960-01-.03 Warranty Charges is amended by deleting the text of the rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read as follows:

Rule 0960-01-.03 Warranty Charges and Sales Incentive Audits.

- (1) (a) All charges made by a motor vehicle dealer to a manufacturer, distributor, manufacturer or distributor branch, or manufacturer or distributor representative for warranty repairs or servicing shall be submitted within thirty (30) days after such repairs or servicing is completed. All such claims for warranty repairs or servicing properly submitted shall be deemed approved and shall be promptly paid, unless within sixty (60) days after such claims are received, the manufacturer, distributor, manufacturer or distributor branch, or manufacturer or distributor representative provides the submitting dealer with written notice that the claim or claims are rejected and the reason therefor. A manufacturer, distributor, manufacturer or distributor branch, or manufacturer or distributor representative may, within twelve (12) months after the payment of a warranty claim, review its action, audit the submitting dealer's records and disallow the claim for good cause.
- (b) A manufacturer, distributor, manufacturer or distributor branch, or manufacturer or distributor representative may, within twelve (12) months after the payment of sales incentives, review its action, audit the submitting dealer's records and disallow the claim for good cause. In the event of a manufacturer or distributor sales incentive audit of a dealer, if it is properly determined that a dealer must reimburse a manufacturer or distributor after a full and fair audit, the dealer shall nevertheless be entitled to a reduction in the reimbursement if the dealer qualified for some different payment or benefit as a result of the sale or sales being audited.
- (2) Unless a motor vehicle dealer's franchise agreement with a manufacturer or distributor provides to the contrary, a motor vehicle dealer is required to retain parts replaced during warranty repairs or services for a period of thirty (30) days after the date the dealer submits a claim for warranty reimbursement to the manufacturer or distributor for the repairs or servicing in which the part or parts were replaced.

Authority: T.C.A. § 55-17-107.

Rule 0960-01-.06 Notice of Termination, Cancellation or Non-Renewal is amended by deleting the text of the rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read as follows:

Rule 0960-01-.06 Notice of Termination, Cancellation or Non-Renewal.

- (1) In the event that a manufacturer, distributor, manufacturer or distributor branch or manufacturer or distributor representative determines that the franchise of an existing motor vehicle dealer should be terminated or cancelled or should not be renewed, it shall give written notice to the dealer and to the Tennessee Motor Vehicle Commission at least sixty (60) days prior to the effective date of the termination, cancellation or non-renewal. This notice shall contain a concise statement of the reasons for the termination, cancellation or non-renewal of the franchise. Upon application of the person cancelling, terminating or failing to renew a franchise and with notice to the dealer affected thereby, the Commission may permit a cancellation, termination or non-renewal of a franchise upon less than sixty (60) days notice, if it determines in writing that a lesser notice period is justified in light of the circumstances surrounding the cancellation, termination or non-renewal.
- (2) Failure of a manufacturer, distributor, manufacturer or distributor branch or manufacturer or distributor representative to give adequate notice pursuant to Rule 0960-01-.06 (1) or to keep the franchise in full force and effect pending a final determination by the Commission or to abide by the Commission's final order may result in the Commission's refusal to issue a motor vehicle dealer's license to another dealership selling the same trade name and line-make of motor vehicles as the affected dealer or doing business in the same relevant market area as the affected dealer. This remedy is in addition to any other remedy provided in T.C.A. §55-17-101 et seq.

Authority: T.C.A. § 55-17-107.

Rule 0960-01-.08 Dealer Applications is amended by deleting the text of the rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read as follows:

Rule 0960-01-.08 Dealer Applications.

- (1) An applicant for a license to sell motor vehicles shall comply with T.C.A. § 55-17-111 and shall provide the Commission with all information required by this section.
- (2) Applicants are required to provide the Commission, and keep current, the names of any inventory financiers, i.e. "floor planners" used by the dealership.
- (3) A motor vehicle dealer applicant shall provide to the Commission a compiled financial statement indicating a minimum net worth of at least Ten Thousand Dollars (\$10,000.00). The compiled financial statement must be prepared in accordance with generally accepted accounting principles by a certified public accountant or public accountant dated not earlier than twelve (12) months prior to the date of the application, and a copy of the same must be furnished to the Commission along with any changes to the statement.

Authority: T.C.A. § 55-17-107 and 55-17-111.

Rule 0960-01-.11 Inspection of Business Records is amended by deleting the text of the rule in its entirety and by substituting instead the following language so that, as amended the rule shall read as follows:

Rule 0960-01-.11 Inspection of Business Records.

- (1) All persons licensed by the Commission shall make available for inspection during normal business hours by the Commission or its duly authorized representative, all books, records and other memorandums of all transactions, transfers and/or sales of motor vehicles, and dead files (any paperwork from an uncompleted deal where a credit application is received or a buyer's/purchase order is prepared).
- (2) All records shall be kept on site or at a location where the records can be accessed in a reasonable

amount of time. Proof of ownership and consignment agreements of each motor vehicle possessed shall be maintained at the location of the dealership or at a dealership which owns the licensee. Temporary tag logs shall be kept at the dealership of the licensee to which the tags were issued. Records may be kept in written or electronic format.

- (3) All business records shall be kept for the period of time required by state or federal law or regulation.

Authority: T.C.A. § 55-17-107.

Rule 0960-01-.14 License Fees is amended by deleting the text of the rule in its entirety and by substituting instead the following language so that, as amended the rule shall read as follows:

Rule 0960-01-.14 License Fees.

- (1) The biennial license fees for licenses issued and renewed and other related fees shall be as follows:
- (a) For each manufacturer, distributor, factory branch, distributor branch, one thousand six hundred dollars (\$1,600.00);
 - (b) For each manufacturer, distributor, fifty dollars (\$50.00) per franchised dealer in Tennessee;
 - (c) For each motor vehicle dealer selling new or used motor vehicles, four hundred dollars (\$400.00);
 - (d) For each factory representative or distributor representative, four hundred dollars (\$400.00);
 - (e) For each motor vehicle salesperson, thirty-five dollars (\$35.00);
 - (f) For each application for endorsement of change of employer of a motor vehicle salesperson by an employer, thirty-five dollars (\$35.00);
 - (g) For each automotive dismantler and recycler, four hundred dollars (\$400.00);
 - (h) For each automobile auction, eight hundred dollars (\$800.00);
 - (i) For each motor vehicle show permit, two hundred dollars (\$200.00);
 - (j) For each duplicate license, twenty-five dollars (\$25.00);
 - (k) For each name change, including additional line-make, four hundred dollars (\$400.00);
 - (l) For each automotive mobility dealer, four hundred dollars (\$400.00);
 - (m) A four hundred dollar (\$400.00) fee will be assessed per re-inspection of an applicant when re-inspection is necessitated by an action or inaction of the applicant;
 - (n) Twenty-five percent (25%) of all license application fees will be forfeited if the applicant fails to submit all required documentation within ninety (90) days of receipt of the application. Any applicant refund must be requested in writing. Documents will be returned to the applicant after ninety (90) days from the initial receipt.

Authority: T.C.A. §§ 55-17-107, 55-17-111, 55-17-112, 55-17-302.

Rule 0960-01-.17 Motor Vehicle Dealer Shows is amended by deleting the text of the rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read as follows:

Rule 0960-01-.17 Motor Vehicle Dealer Shows.

- (1) A motor vehicle show is any display, except as provided herein below, of motor vehicles by one or more

manufacturers, distributors, or motor vehicle dealers.

- (2) A motor vehicle show permit must be obtained from the Motor Vehicle Commission by the sponsor or promoter thereof no later than ten (10) days prior to the commencement of the motor vehicle show. The permit, or copy thereof, shall be prominently displayed at any entrance into the motor vehicle show.
- (3) A motor vehicle show permit shall be valid for seven (7) consecutive days and may be renewed one (1) time for an additional seven (7) consecutive days. Any such renewal shall begin the day after the expiration of the original permit. A sponsor or promoter may obtain only one motor vehicle show permit and renewal per calendar year for the same location.
- (4) The applicant shall provide to the Commission the names and addresses of each manufacturer, distributor or motor vehicle dealer displaying motor vehicles at the show.
- (5) The sales price of each motor vehicle displayed at the show shall be prominently displayed with the vehicle. Any warranty information associated with the vehicle must be available upon request.
- (6) Any manufacturer, distributor, motor vehicle dealer or other person displaying motor vehicles at the motor vehicle show shall have a representative present at all times during the motor vehicle show.
- (7) No sales, or negotiations leading to the sale, of motor vehicles, other than non-motorized camping trailers and travel trailers as provided by T.C.A. Title 55, Chapter 17 et seq., may take place at the motor vehicle show.
- (8) A manufacturer, distributor, or motor vehicle dealer may display at a single location without obtaining a motor vehicle show permit, provided that no representatives of the displayer are present and that no sales solicitations or activities take place, at the following locations:
 - (a) The interior common areas of shopping malls, hotels or convention centers;
 - (b) The interior of wholesale shopping clubs;
 - (c) County, regional or state fairs;
 - (d) Agricultural events and educational demonstrations;
 - (e) Sporting and entertainment events in conjunction with the sponsorship thereof;
 - (f) Commercial airport terminals.

Authority: T.C.A. §§ 55-17-107.

Rule 0960-01-.21 Motor Vehicle Dealer Facilities is amended by deleting the text of the rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read as follows:

Rule 0960-01-.21 Motor Vehicle Dealer Facilities.

- (1) The facility must be physically separate and apart from any other businesses and shall not include any private residence, tent or temporary stand. The facility may be connected to another business facility provided there is a permanent wall from floor to ceiling between the two businesses and the motor vehicle facility has a separate outside entrance and exit. Any doors between the businesses shall be permanently sealed.
- (2) The facility shall contain adequate office space (a minimum of 288 square feet) for processing sales and purchases of motor vehicles. The facility shall also contain restroom accommodations.
- (3) The facility shall have a primary telephone number listed in the local directory under the name of the dealership. Mobile and/or cellular telephones are not acceptable as the primary business telephone. The primary phone number of the dealership shall be posted either on the door to the dealership, in a window

of the dealership or on the dealership's sign.

- (4) The facility shall have immediate and contiguous access to and exclusive dedicated use of a motor vehicle storage or display lot capable of accommodating fifteen (15) motor vehicles of the dealership's product line. A lot shall consist of compacted gravel, chert, stone or similar materials and shall not include public lands, unimproved land or residential driveways. The facility shall also contain a minimum of three (3) parking spots dedicated for customer parking.
- (5) The facility shall be used exclusively for buying, selling, renting, displaying, advertising, demonstrating, servicing or repairing motor vehicles or selling functional or nonfunctional parts, including accessories, safety equipment and vehicle branded clothing.

Authority: T.C.A. § 55-17-107 and 55-17-114.

Chapter 0960-05
Automotive Mobility Dealer License
New Rules

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0960-05-.01 Sales Tax Identification Number.

All automotive mobility dealers shall obtain and hold a current sales tax identification number indicating their business as that of an automotive mobility dealer. Upon expiration of a sales tax identification number, the licensee shall either cease business operations, or provide evidence of a valid sales tax identification number. The automotive mobility dealer license shall be invalid during the period of time without a sales tax identification number.

Authority: T.C.A. §§ 55-17-107, 55-17-111 and 55-17-302.

0960-05-.02 City and County Business License.

All automotive mobility dealers shall obtain and hold a current city and county business license indicating their business as that of an automotive mobility dealer. Upon expiration of a business license, the licensee shall either cease business operations, or provide evidence of a valid business license. The automotive mobility dealer's license shall be invalid during the period of time without a valid business license.

Authority: T.C.A. §§ 55-17-107, 55-17-111 and 55-17-302.

0960-05-.03 Liability Insurance and Worker's Compensation.

- (1) An applicant for an automotive mobility dealer license shall submit to the Commission with each application for license a certificate of comprehensive garage liability insurance which covers all premises and operations as listed in the application for license, in a minimum amount of coverage of Five Hundred Thousand Dollars (\$500,000.00) per occurrence.

- (2) The minimum required coverage must remain and continue in force for as long as the automotive mobility dealer remains licensed. Upon notice of cancellation, the licensee shall either cease business operations until proof of minimum coverage is provided, or provide evidence of minimum coverage from another provider.
- (3) All automotive mobility dealers shall comply with the applicable workers' compensation laws of the State of Tennessee.

Authority: T.C.A. §§ 55-17-107, 55-17-111 and 55-17-302.

0960-05-.04 Primary Business Activity.

All applicants for an automotive mobility dealer license shall provide a statement to the Commission that the applicant intends to be engaged primarily as an automotive mobility dealer.

Authority: T.C.A. §§ 55-17-107, 55-17-111 and 55-17-302.

0960-05-.05 Signs.

All automotive mobility dealers shall install signs at their established place of business identifying them as an automotive mobility dealer. Such signs shall consist of letters no less than eight (8) inches in height and shall not advertise any other business or product.

Authority: T.C.A. §§ 55-17-107 and 55-17-302.

0960-05-.06 Automotive Mobility Dealer Facilities.

The following minimum requirements apply to all automotive mobility dealer facilities:

- (1) The facility must be physically separate and apart from any other businesses and shall not include any private residence, tent or temporary stand. The facility may be connected to another business facility provide there is a permanent wall from floor to ceiling between the two businesses and the motor vehicle facility has a separate outside entrance and exit. Any doors between the businesses shall be permanently sealed.
- (2) The facility shall contain adequate office space (a minimum of 288 square feet) for processing sales and purchases of adapted vehicles. The facility shall also contain restroom accommodations.
- (3) The facility shall have a primary telephone number listed in the local directory under the name of the dealership. Mobile and/or cellular telephones are not acceptable as the primary business telephone. The primary phone number of the dealership shall be posted either on the door to the dealership, in a window of the dealership or on the dealership's sign.
- (4) The facility shall have immediate and contiguous access to and exclusive dedicated use of an adapted vehicle storage or display lot capable of accommodating fifteen (15) adapted vehicles of the dealership's product line. A lot shall consist of compacted gravel, chert, stone, or similar materials and shall not include public lands, unimproved land or residential driveways. The facility shall also contain a minimum of three (3) parking spots dedicated for customer parking.

Authority: T.C.A. §§ 55-17-107, 55-17-114 and 55-17-302.

0960-05-.07 Reasonable Business Hours.

All automotive mobility dealers shall be open at their established place of business during reasonable business hours, and these hours shall be posted either on the door to the dealership, in a window of the dealership or on the dealership's sign. For this section, "reasonable business hours" means at least three days a week for a minimum of twelve hours (12) total during the week. The reasonable business hours must be between 8:00 a.m. and 7:00 p.m., and at least eight (8) of the hours must be on Monday, Tuesday, Wednesday, Thursday or Friday.

Authority: T.C.A. §§ 55-17-107 and 55-17-302.

0960-05-.08 Automotive Mobility Dealer Applications and Requirements.

- (1) An applicant for an automotive mobility dealer license shall comply with the same requirements as a motor vehicle dealer in T.C.A. § 55-17-111 and shall provide the Commission with all information required by this section.
- (2) Applicants are required to provide the Commission, and keep current, the names of any inventory financiers, i.e. "floor planners" used by the dealership.
- (3) An automotive mobility dealer applicant shall provide to the Commission a compiled financial statement indicating a minimum net worth of at least Fifty Thousand Dollars (\$50,000.00). The compiled financial statement must be prepared in accordance with generally accepted accounting principles by a certified public accountant or public accountant dated not earlier than twelve (12) months prior to the date of the application, and a copy of the same must be furnished to the Commission along with any changes to the statement.
- (4) An applicant for an automotive mobility dealer license shall certify compliance with the following:
 - (a) T.C.A. § 55-9-201 et seq. regarding the required equipment of vehicles operated in Tennessee;
 - (b) 49 C.F.R. Part 567 regarding the modification and alteration of motor vehicles;
 - (c) 49 C.F.R. Part 571, Federal Motor Vehicle Safety Standards; and
 - (d) 49 C.F.R. Part 595 regarding make inoperative exemptions.
- (5) An automotive mobility dealer applicant that actually modifies motor vehicles to create adapted vehicles, installs mobility equipment, or services or repairs adapted vehicles or mobility equipment shall certify:
 - (a) That all mobility equipment and materials utilized in the modification, installation, servicing or repair comply with applicable federal and state guidelines, as set forth in paragraph (4) of this rule and;
 - (b) That the relevant personnel of the automotive mobility dealer have been trained and certified, if applicable, by the equipment manufacturers or other competent authority with regard to the modification, installation, repair or servicing.
- (6) Prior to the delivery of an adapted vehicle to a customer, an automotive mobility dealer shall:
 - (a) Verify that the customer received appropriate training regarding operation and usage of the adapted vehicle purchased;
 - (b) Verify that the customer received a driver evaluation regarding operation and usage of the adapted vehicle purchased to ensure his/her ability to operate the vehicle in a safe manner; and
 - (c) Retain a record of compliance with the requirements of Rule 0960-05-.08(5)(a) & (b) as part of its business record.

Authority: T.C.A. §§ 55-17-107, 55-17-111 and 55-17-302.

0960-05-.09 Denial, Suspension, or Revocation of License.

- (1) The Commission may deny an application for a license or revoke or suspend the license of an automotive mobility dealer who:
 - (a) Fails to comply with the application provisions and requirements of Rule 0960-05-.08;
 - (b) Violates any provision of T.C.A. § 55-17-114 (a) & (b); or

- (c) Accepts on consignment at any given time more than two (2) new untitled motor vehicles of a specific line make by any franchised motor vehicle dealer.
- (2) The Commission shall, after a notice of hearing, revoke the license of an automotive mobility dealer if it determines that the dealer has sold or modified a vehicle that does not comply with the following:
 - (a) T.C.A. § 55-9-201 et seq. regarding the required equipment of vehicles operated in Tennessee;
 - (b) 49 C.F.R. Part 567 regarding the modification and alteration of motor vehicles;
 - (c) 49 C.F.R. Part 571, Federal Motor Vehicle Safety Standards; and
 - (d) 49 C.F.R. Part 595 regarding make inoperative exemptions.

Authority: T.C.A. §§ 55-17-107, 55-17-114, 55-17-302 and 55-17-303.

* 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)
Eddie Roberts – Chairman	X				
Stan McNabb	X				
George Bass	X				
William Tarr				X	
Joe Clayton	X				
Kevin Cullum				X	
Ronnie Fox	X				
Donnie Hatcher	X				
Nate Jackson	X				
Chad Jones	X				
Reed Trickett				X	
Mark Pirtle				X	
Farrar Schaeffer				X	
Don Parr	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the commission on 06/06/2011, 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: 04/15/2011

Rulemaking Hearing(s) Conducted on: (add more dates). 06/06/2011

Date: 6/17/2011

Signature: [Handwritten Signature]

Name of Officer: Anthony M. Glandorf

Title of Officer: Asst. General Counsel



Subscribed and sworn to before me on: 6-17-2011

Notary Public Signature: [Handwritten Signature]

My commission expires on: July 5 2011

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
6-20-11
 Date

Department of State Use Only

Filed with the Department of State on: 6/22/11

Effective on: 9/20/11

Tre Hargett by Wm. Scott POA
Tre Hargett
Secretary of State

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PUBLICATIONS

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Mr. Roberts Weaver of the Tennessee Automotive Association submitted oral testimony in support of the amendments to the general rules along with the new rules regarding the newly enacted automotive mobility dealer license. Mr. Weaver expressed his remembrance of the Tennessee legislature's passing of Public Chapter 1038 of Public Acts 2010 and indicated that the rules proposed by the Commission will support that act's enforcement.

Response: The Commission appreciates these comments and has taken them into consideration.

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.

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

There is no overlap, duplication, or conflict with federal, state or local governmental rules.

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

The proposed amendments and rules are clear, concise and unambiguous.

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

In order to effectuate the purpose of the statute of serving the public interest and welfare by protecting citizens from fraud and other abuses, small businesses are required to comply with the above amendments in the same manner as larger businesses. Proposed amendment to Rule 0960-01-.11 requires maintaining certain business records at the location of the dealership or at the location of a parent company of the licensee. Each dealership must maintain these records by rule, however the proposed amendment requires that certain essential records be maintained either on site of the licensee or at another dealership which owns the licensee. Also, some smaller businesses may indicate that keeping their temporary tag log or proof of vehicle ownership at the location provides a burden upon them, however this burden is outweighed by the need for the Commission to be able to readily inspect those records to ensure the safety, health and welfare of the citizens of Tennessee and therefore, flexible compliance is not feasible. Proposed amendment to Rule 0960-01-.21 regarding motor vehicle dealer facilities is necessary in order to maintain a motor vehicle dealership facility size to accommodate all inventory, trade-in vehicles and customer parking. Ensuring this area is contiguous to the facility provides greater safety to citizens. As the health, safety and welfare of the citizens of Tennessee are increased, flexibility of this facility requirement to small businesses is not feasible.

The proposed new Rule 0960-05-.08 requires maintaining of certain verifications of training for customers purchasing an adapted vehicle. Due to these vehicles being adapted for disabled and aged persons, and the small burden to retain such verification of training, a flexible reporting requirement for small businesses is not feasible.

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 are held to the same standards as larger businesses regarding the keeping of business records for motor vehicle dealers, maintaining verification of training of customers purchasing adapted vehicles. These business records retention amendments do not create new documents to be produced but concern the location at which these documents must be maintained.

5. Consolidation or simplification of compliance or reporting requirements:

The amendments proposed do not complicate compliance or reporting requirements. The addition of the definition "sales incentives" to Rule 0960-01-.01, clarifies an existing rule regarding sales audit incentives. Rule 0960-01-.11 also provides clarification as to which business records must be maintained at the dealership location at all times. Rule 0960-01-.17 provides clarification of how often a motor vehicle show may be held at the same location by the same applicant.

The creation of Rule 0960-05 et seq. creates the same foundational licensing requirements for automotive mobility dealer licenses as are found for motor vehicle dealer licenses so that an applicant qualifying for an automotive mobility dealer license will likely qualify for a motor vehicle dealer license. Rule 0960-05-.08 requiring for the keeping of records regarding the training of customers of adapted vehicles provides a basic requirement of certification of such training. The rules of compliance for automotive mobility dealers under Rule 0960-05-.08 provide for the same compliance standard as the current Federal regulations, which is a more simplified compliance requirement than adopting the National Mobility Equipment Dealers Association's 'Quality Assurance Program.'

6. Performances standards for small businesses:

There are no performance standards for small businesses as a result of these amendments and new rules.

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

The amendment to Rule 0960-01-.08 requires a net worth of ten thousand dollars (\$10,000.00) for motor vehicle dealer applicants. Under T.C.A. § 55-17-111, a financial statement is required for all applicants, however, a required net worth is not established. The Commission has found that without such a requirement, applicants with little net worth were found entering the business as motor vehicle dealers but soon after were going out of business. In doing so, many of these dealers failed to provide titles to consumers. In order to protect the safety, health and welfare to the citizens of Tennessee who are purchasing motor vehicles, a minimum net worth is needed. The requirement of ten thousand dollars (\$10,000.00) is found to be a low barrier of entry to provide greater assurance that consumers will be protected.

Economic Impact Statement:

1. Types of small businesses directly affected:

All small businesses that are motor vehicle dealers and automotive mobility dealers doing business within the State of Tennessee will be directly affected.

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

The amendment to Rule 0960-01-.11 regarding the requirement of keeping certain records at the business location of the licensee is not expected to generate an increased cost of maintaining those records. Newly created Chapter 0960-05 et seq. requires the retention of certain documents, but is projected not to increase the cost of recordkeeping and administrative costs in selling of adapted vehicles to disabled or aged persons.

3. Probable effect on small businesses:

The amendments to Chapter 0960-01 et seq. will require new small business motor vehicle dealer applicants to show a minimum net worth of ten thousand dollars (\$10,000.00). Current small business motor vehicle dealers in operation will not be affected by this amendment. The amendment to Rule 0960-01-.21 provides clarification of the facility requirements for a motor vehicle dealership to ensure that a licensee cannot use a common-use parking lot as their own display lot for their dealership. This amendment will not bar small businesses to obtain a motor vehicle dealer license but will ensure that selected facilities are adequate to safely hold their inventory without posing a danger to consumers. Current dealerships will not be affected by this amendment.

The new rules found in Chapter 0960-05 et seq. regarding the creation of the automotive mobility dealer license will minimally disrupt current business operations. The majority of the future licensees under this rule are currently licensed as motor vehicle dealers. As such, their facilities are likely to be in compliance with the requirement of this new license.

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 to small businesses to implement the changes required by the proposed amendments and additions to the rules are offset by the protections provided to the citizens of Tennessee.

5. Comparison with federal and state counterparts:

The new rules created under Chapter 0960-05 et seq. regarding automotive mobility dealer licenses were modeled after the Kentucky Transportation Cabinet rules found in 605 KAR 1:031. These new rules were also compared to a similar regulatory scheme in Indiana. Under Indiana Code § 9-23-2-5.5, an applicant for an automotive mobility dealer license is required to be a member of the National Mobility Equipment Dealers Association and adhere to the Quality Assurance Program of that organization. The Commission reviewed the Quality Assurance Program requirements and found them to be overly burdensome to the applicant and as such decided the Kentucky model was more desirable over the Indiana regulation.

The requirements of new Rule 0960-05-.08 regarding the certification to comply with all state and federal laws regarding the modification of a motor vehicles provide notice that an automotive mobility dealer must modify a vehicle in a manner which complies with 49 C.F.R. 567 regarding the modifications and alterations, compliance with 49 C.F.R. 571 concerning the Federal Motor Vehicle Safety Standards and 48 C.F.R. 595 regarding making certain vehicle operations inoperative. Failure to comply with the federal counterparts listed above is grounds for denial, suspension or revocation of the license under Rule 0960-05-.09.

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 regarding the required net worth, motor vehicle dealer facility requirements and maintaining critical business records at each licensee location. It is equally imperative that all automotive mobility dealers be kept to the same standard regarding licensing requirements and compliance with all state and federal laws relating to the modification of motor vehicles for use by disabled or aged persons. Any exemption on small businesses would severely detract from the Commission's ability to investigate and determine violations based upon consumer complaints.

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)

These amendments and new rules adopted do not create a foreseeable impact on local governments.

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;

Rule 0960-01-.01 Definitions is amended to provide a definition for "sales incentives", which is a term used in Rule 0960-01-.03 regarding sales incentive audits. This definition provides clarification for the rule. Rule 0960-01-.03 Warranty Charges and Sales Incentive Audits is amended to allow a dealer to capture any sales incentive it would be entitled to if during an audit by a manufacturer, it is found that a sales incentive was improperly awarded and eventually recaptured. Rule 0960-01-.08 Dealer Applications is amended to require a minimum net worth of motor vehicle dealer applicants in the amount of ten thousand dollars (\$10,000.00). There is currently not a net worth requirement for motor vehicle dealer licensees; however these applicants are statutorily required to submit a financial statement. As there is no stated requirement the Commission has traditionally used a policy standard of requiring an applicant to show a net worth of \$1,000.00. This standard is currently still used. It is the opinion of the Commission that without a minimum net worth requirement, consumers are not adequately protected from fraudulent, deceptive and unfair practices from licensees. Rule 0960-01-.11 Inspection of Business Records provides that all licensees must keep at its location, proof of ownership of motor vehicles along with its temporary tag log. This is to allow more thorough inspections by investigators. Rule 0960-01-.14 is amended to create a four hundred dollar (\$400.00) license fee for the newly created automotive mobility dealer license. The rule is also amended to provide a procedure for license application refunds. Rule 0960-01-.17 Motor Vehicle Shows is amended to clarify the original rule by restricting motor vehicle shows so that a show location cannot be permanently renewed. Rule 0960-01-.21 Motor Vehicle Dealer Facilities is amended to require storage facilities and/or display lot to be contiguous to the property of the facility.

The creation of Chapter 0960-05 et seq. encompasses promulgating the licensing requirements and disciplinary rules for the new automotive mobility dealer license. Rule 0960-05-.01 requires the applicant to obtain a sales tax identification number. Rule 0960-05-.02 requires the applicant to obtain and maintain city and county business licenses. Rule 0960-05-.03 Liability Insurance and Worker's Compensation is created to notify licensees to comply with all applicable workers' compensation laws. Rule 0960-05-.04 Primary Business Activity is created to require the applicant and licensee to certify it will primarily be engaged in the business of an automobile mobility dealer. Rule 0960-05-.05 Signs is created to provide a facility signage requirement. Rule 0960-05-.06 Automotive Mobility Facilities is created to provide a minimum requirement for the facilities of the licensee, which reflects the same requirements of a motor vehicle dealer. Rule 0960-05-.07 Reasonable Business Hours is created to require minimum number hours the licensee must operate the facility per week. Rule 0960-05-.08 Automotive Mobility Dealer Applications and Requirements is created to provide that applicants who are modifying motor vehicles certify compliance with all state and federal laws regarding modifying motor vehicles and requires their workers performing the modifications to be educated on the equipment being installed for the modification. The rule also requires the licensee to verify customer training on the modified vehicle, verify that an evaluation was given and to maintain a record of both. Rule 0960-05-.09 sets out the activities for which a license may be denied, revoked or suspended. The language incorporates a mandatory revocation of certain actions.

- (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;

Tenn. Code Ann. § 55-17-302(b)(2), mandates the Commission to create regulations relative to the creation of the new automotive mobility dealer license. General rule amendments are promulgated pursuant to T.C.A. §§ 55-17-101 et seq.

- (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;

Motor Vehicle Dealers, Manufacturers, and Automotive Mobility Dealers doing business within the State of

Tennessee will be affected by these rules. Members of the Tennessee Automotive Association along with the Tennessee Independent Auto Dealers Association are also impacted by these rules. The Department received comments from the Tennessee Automotive Association urging adoption of the general rule amendments and promulgation of the new rules related to the newly enacted automotive mobility dealer license.

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

I am unaware of any opinion of the attorney general or any judicial ruling that directly relates to these rules.

- (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;

Fiscal impact is minimal. The increased expenditures for issuance of this license will be offset by the license fee associated with licensee applications.

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

Anthony Glandorf – Assistant General Counsel, Keeling Baird – Assistant General Counsel, Leon Stribling – Executive Director, and Barry Whitson – Administrative Manager

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

Anthony Glandorf – Assistant General Counsel, Keeling Baird – Assistant General Counsel, Leon Stribling – Executive Director, and Barry Whitson – Administrative Manager

- (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

500 James Robertson Parkway, Davy Crockett Tower, 12th Floor, Nashville TN 37243

Anthony Glandorf – 615-253-3703	anthony.glandorf@tn.gov
Keeling Baird – 615-253-2547	keeling.r.baird@tn.gov
Leon Stribling – 615-253-1312	leon.stribling@tn.gov
Barry Whitson – 615-253-1318	barry.whitson@tn.gov

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

None.

**Department of State
Division of Publications**

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

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 Motor Vehicle Commission
Division:	Department of Commerce and Insurance
Contact Person:	Anthony Glandorf
Address:	500 James Robertson Parkway, Nashville, Tennessee
Zip:	37243
Phone:	(615) 253-3703
Email:	Anthony.glandorf@tn.gov

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
0960-01	General Rules
Rule Number	Rule Title
0960-01-.01	Definitions
0960-01-.03	Warranty Charges and Sales Incentive Audits
0960-01-.08	Dealer Applications
0960-01-.11	Inspection of Business Records
0960-01-.14	License Fees
0960-01-.17	Motor Vehicle Shows
0960-01-.21	Motor Vehicle Dealer Facilities

Chapter Number	Chapter Title
0960-05	Automotive Mobility Dealer License
Rule Number	Rule Title
0960-05-.01	Sales Tax ID Number
0960-05-.02	City and County Business License
0960-05-.03	Liability Insurance and Worker's Compensation
0960-05-.04	Primary Business Activity
0960-05-.05	Signs
0960-05-.06	Automotive Mobility Dealer Facilities
0960-05-.07	Reasonable Business Hours
0960-05-.08	Automotive Mobility Dealer Applications and Requirements
0960-05-.09	Denial, Suspension or Revocation of License

Chapter 0960-01
General Rules
Amendments

Rule 0960-01-.01 Definitions is amended by adding the following paragraph, so that as amended the additional paragraph will read as follows:

- (8) the term "sales incentive" shall mean a payment made or other benefit provided by a manufacturer or distributor pursuant to a program to incentivize the retail sale of a vehicle or vehicles distributed by the manufacturer or distributor. Without limiting the foregoing, each of the following is an example of a Sales Incentive: (1) a payment made or a benefit provided by a manufacturer or distributor for which a buyer of a vehicle from a dealer becomes eligible as a result of purchasing a vehicle, whether the payment or benefit is given to the buyer or to another based on assignment of the right thereto by the buyer of a vehicle; (2) a payment made or benefit provided by a manufacturer or distributor to a dealer because of the dealer's sale of a vehicle; (3) a payment made or a benefit provided by a manufacturer or distributor to a dealer for a dealer's sale of multiple vehicles to meet a goal or objective of a manufacturer or distributor's program; (4) a payment made or a benefit provided by a manufacturer or distributor to a dealer for a dealer's sale of a vehicle or sales of vehicles where the amount of compensation or benefit is determined based on a dealer's sales in comparison to a goal or goals of a manufacturer or distributor's program; and/or (5) a payment made or benefit provided by a manufacturer or distributor to a dealer or the customer on account of the customer's status as an employee of the manufacturer or distributor, a relative of an employee of the manufacturer or distributor, a supplier to the manufacturer or distributor, or as a former customer of the brand, or as a payment or other benefit given to a buyer who currently owns a competing brand as an inducement to purchase a vehicle.

Authority: T.C.A. § 55-17-107.

Rule 0960-01-.03 Warranty Charges is amended by deleting the text of the rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read as follows:

Rule 0960-01-.03 Warranty Charges and Sales Incentive Audits.

- (1) (a) All charges made by a motor vehicle dealer to a manufacturer, distributor, manufacturer or distributor branch, or manufacturer or distributor representative for warranty repairs or servicing shall be submitted within thirty (30) days after such repairs or servicing is completed. All such claims for warranty repairs or servicing properly submitted shall be deemed approved and shall be promptly paid, unless within sixty (60) days after such claims are received, the manufacturer, distributor, manufacturer or distributor branch, or manufacturer or distributor representative provides the submitting dealer with written notice that the claim or claims are rejected and the reason therefore. A manufacturer, distributor, manufacturer or distributor branch, or manufacturer or distributor representative may, within twelve (12) months after the payment of a warranty claim, review its action, audit the submitting dealer's records and disallow the claim for good cause.
- (b) A manufacturer, distributor, manufacturer or distributor branch, or manufacturer or distributor representative may, within twelve (12) months after the payment of sales incentives, review its action, audit the submitting dealer's records and disallow the claim for good cause. In the event of a manufacturer or distributor sales incentive audit of a dealer, if it is properly determined that a dealer must reimburse a manufacturer or distributor after a full and fair audit, the dealer shall nevertheless be entitled to a reduction in the reimbursement if the dealer qualified for some different payment or benefit as a result of the sale or sales being audited.
- (2) Unless a motor vehicle dealer's franchise agreement with a manufacturer or distributor provides to the contrary, a motor vehicle dealer is required to retain parts replaced during warranty repairs or services for a period of thirty (30) days after the date the dealer submits a claim for warranty reimbursement to the manufacturer or distributor for the repairs or servicing in which the part or parts were replaced.

Authority: T.C.A. § 55-17-107.

Rule 0960-01-.06 Notice of Termination, Cancellation or Non-Renewal is amended by deleting the text of the rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read as follows:

Rule 0960-01-.06 Notice of Termination, Cancellation or Non-Renewal.

- (1) In the event that a manufacturer, distributor, manufacturer or distributor branch or manufacturer or distributor representative determines that the franchise of an existing motor vehicle dealer should be terminated or cancelled or should not be renewed, it shall give written notice to the dealer and to the Tennessee Motor Vehicle Commission at least sixty (60) days prior to the effective date of the termination, cancellation or non-renewal. This notice shall contain a concise statement of the reasons for the termination, cancellation or non-renewal of the franchise. Upon application of the person cancelling, terminating or failing to renew a franchise and with notice to the dealer affected thereby, the Commission may permit a cancellation, termination or non-renewal of a franchise upon less than sixty (60) days notice, if it determines in writing that a lesser notice period is justified in light of the circumstances surrounding the cancellation, termination or non-renewal.
- (2) Failure of a manufacturer, distributor, manufacturer or distributor branch or manufacturer or distributor representative to give adequate notice pursuant to Rule ~~0960-01-.05 (1)~~ 0960-01-.06 (1) or to keep the franchise in full force and effect pending a final determination by the Commission or to abide by the Commission's final order may result in the Commission's refusal to issue a motor vehicle dealer's license to another dealership selling the same trade name and line-make of motor vehicles as the affected dealer or doing business in the same relevant market area as the affected dealer. This remedy is in addition to any other remedy provided in T.C.A. §55-17-101 et seq.

Authority: T.C.A. § 55-17-107.

Rule 0960-01-.08 Dealer Applications is amended by deleting the text of the rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read as follows:

Rule 0960-01-.08 Dealer Applications.

- (a) ~~(1)~~ An applicant for a license to sell used motor vehicles shall comply with T.C.A. § 55-17-111 and shall provide the Commission with all information required by this section.
- (b) ~~(2)~~ Applicants are required to provide the Commission, and keep current, the names of any inventory financiers, i.e. "floor planners" used by the dealership.
- (c) ~~If an applicant has not supplied all the necessary materials within one hundred twenty (120) days from the date of the request for further information by the Commission, the application shall be deemed expired.~~
- (3) A motor vehicle dealer applicant shall provide to the Commission a compiled financial statement indicating a minimum net worth of at least Ten Thousand Dollars (\$10,000.00). The compiled financial statement must be prepared in accordance with generally accepted accounting principles by a certified public accountant or public accountant dated not earlier than twelve (12) months prior to the date of the application, and a copy of the same must be furnished to the Commission along with any changes to the statement.

Authority: T.C.A. § 55-17-107 and 55-17-111.

Rule 0960-01-.11 Inspection of Business Records is amended by deleting the text of the rule in its entirety and by substituting instead the following language so that, as amended the rule shall read as follows:

Rule 0960-01-.11 Inspection of Business Records.

- (1) All persons licensed by the Commission shall make available for inspection during normal business hours by the Commission or its duly authorized representative, all books, records and other memorandums of all transactions, transfers and/or sales of motor vehicles, and dead files (any paperwork from an

uncompleted deal where a credit application is received or a buyer's/purchase order is prepared).

(2) All records shall be kept on site or at a location where the records can be accessed in a reasonable amount of time. Proof of ownership and consignment agreements of each motor vehicle possessed shall be maintained at the location of the dealership or at a dealership which owns the licensee. Temporary tag logs shall be kept at the dealership of the licensee to which the tags were issued. Records may be kept in written or electronic format.

(3) All business records shall be kept for the period of time required by state or federal law or regulation.

Authority: T.C.A. § 55-17-107.

Rule 0960-01-.14 License Fees is amended by deleting the text of the rule in its entirety and by substituting instead the following language so that, as amended the rule shall read as follows:

Rule 0960-01-.14 License Fees.

- (1) The biennial license fees for licenses issued and renewed and other related fees shall be as follows:
- (a) For each manufacturer, distributor, factory branch, distributor branch, one thousand six hundred dollars (\$1,600.00);
 - (b) For each manufacturer, distributor, fifty dollars (\$50.00) per franchised dealer in Tennessee;
 - (c) For each motor vehicle dealer selling new or used motor vehicles, four hundred dollars (\$400.00);
 - (d) For each factory representative or distributor representative, four hundred dollars (\$400.00);
 - (e) For each motor vehicle ~~salesman~~ salesperson, thirty-five dollars (\$35.00);
 - (f) For each application for endorsement of change of employer of a motor vehicle ~~salesman~~ salesperson by an employer, thirty-five dollars (\$35.00);
 - (g) For each automotive dismantler and recycler, four hundred dollars (\$400.00);
 - (h) For each automobile auction, eight hundred dollars (\$800.00);
 - (i) For each motor vehicle show permit, two hundred dollars (\$200.00);
 - (j) For each duplicate license, twenty-five dollars (\$25.00);
 - (k) For each name change, including additional line-make, four hundred dollars (\$400.00);
 - (l) ~~A four hundred dollar (\$400.00) fee will be assessed per re-inspection of an applicant when re-inspection is necessitated by an action or inaction of the applicant; For each automotive mobility dealer, four hundred dollars (\$400.00);~~
 - (m) ~~Twenty-five percent (25%) of all license application fees will be forfeited if the applicant fails to submit all required documentation within ninety (90) days of receipt of the application. Documents will be returned to the applicant after ninety (90) days from the initial receipt. A four hundred dollar (\$400.00) fee will be assessed per re-inspection of an applicant when re-inspection is necessitated by an action or inaction of the applicant;~~
 - (n) Twenty-five percent (25%) of all license application fees will be forfeited if the applicant fails to submit all required documentation within ninety (90) days of receipt of the application. Any applicant refund must be requested in writing. Documents will be returned to the applicant after ninety (90) days from the initial receipt.

Authority: T.C.A. §§ 55-17-107, 55-17-111, 55-17-112 and 55-17-302.

Rule 0960-01-.17 Motor Vehicle Dealer Shows is amended by deleting the text of the rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read as follows:

Rule 0960-01-.17 Motor Vehicle Dealer Shows.

- (1) A motor vehicle show is any display, except as provided herein below, of motor vehicles by one or more manufacturers, distributors, or motor vehicle dealers.
- (2) A motor vehicle show permit must be obtained from the Motor Vehicle Commission by the sponsor or promoter thereof no later than ten (10) days prior to the commencement of the motor vehicle show. The permit, or copy thereof, shall be prominently displayed at any entrance into the motor vehicle show.
- (3) A motor vehicle show permit shall be ~~good~~ valid for seven (7) consecutive days and may be renewed one (1) ~~time~~ for an additional seven (7) consecutive days. Any such renewal shall begin the day after the expiration of the original permit. A sponsor or promoter may obtain only one motor vehicle show permit and renewal per calendar year for the same location.
- (4) The applicant shall provide to the Commission the names and addresses of each manufacturer, distributor or motor vehicle dealer displaying motor vehicles at the show.
- (5) The sales price of each motor vehicle displayed at the show shall be prominently displayed with the vehicle. Any warranty information associated with the vehicle must be available upon request.
- (6) Any manufacturer, distributor, motor vehicle dealer or other person displaying motor vehicles at the motor vehicle show shall have a representative present at all times during the motor vehicle show.
- (7) No sales, or negotiations leading to the sale, of motor vehicles, other than non-motorized camping trailers and travel trailers as provided by T.C.A. Title 55, Chapter 17 et seq., may take place at the motor vehicle show.
- (8) A manufacturer, distributor, or motor vehicle dealer may display at a single location without obtaining a motor vehicle show permit, provided that no representatives of the displayer are present and that no sales solicitations or activities take place, at the following locations:
 - (a) The interior common areas of shopping malls, hotels or convention centers;
 - (b) The interior of wholesale shopping clubs;
 - (c) County, regional or state fairs;
 - (d) Agricultural events and educational demonstrations;
 - (e) Sporting and entertainment events in conjunction with the sponsorship thereof;
 - (f) Commercial airport terminals.

Authority: T.C.A. §§ 55-17-107.

Rule 0960-01-.21 Motor Vehicle Dealer Facilities is amended by deleting the text of the rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read as follows:

Rule 0960-01-.21 Motor Vehicle Dealer Facilities.

- (1) The facility must be physically separate and apart from any other businesses and shall not include any private residence, tent or temporary stand. The facility may be connected to another business facility provided there is a permanent wall from floor to ceiling between the two businesses and the motor vehicle facility has a separate outside entrance and exit. Any doors between the businesses shall be permanently sealed.

- (2) The facility shall contain adequate office space (a minimum of 288 square feet) for processing sales and purchases of motor vehicles. The facility shall also contain restroom accommodations.
- (3) The facility shall have a primary telephone number listed in the local directory under the name of the dealership. Mobile and/or cellular telephones are not acceptable as the primary business telephone. The primary phone number of the dealership shall be posted either on the door to the dealership, in a window of the dealership or on the dealership's sign.
- (4) The facility shall have immediate and contiguous access to and exclusive dedicated use of a motor vehicle storage or display lot capable of accommodating fifteen (15) motor vehicles of the dealership's product line. A lot shall consist of compacted gravel, chert, stone or similar materials and shall not include public lands, unimproved land or residential driveways. The facility shall also contain a minimum of three (3) parking spots dedicated for customer parking.
- (5) The facility shall be used exclusively for buying, selling, renting, displaying, advertising, demonstrating, servicing or repairing motor vehicles or selling functional or nonfunctional parts, including accessories, safety equipment and vehicle branded clothing.

Authority: T.C.A. § 55-17-107 and 55-17-114.

Chapter 0960-05
Automotive Mobility Dealers
New Rules

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0960-05-.09 Denial, Suspension or Revocation of License

0960-05-.01 Sales Tax Identification Number.

All automotive mobility dealers shall obtain and hold a current sales tax identification number indicating their business as that of an automotive mobility dealer. Upon expiration of a sales tax identification number, the licensee shall either cease business operations, or provide evidence of a valid sales tax identification number. The automotive mobility dealer license shall be invalid during the period of time without a sales tax identification number.

Authority: T.C.A. §§ 55-17-107, 55-17-111 and 55-17-302.

0960-05-.02 City and County Business License.

All automotive mobility dealers shall obtain and hold a current city and county business license indicating their business as that of an automotive mobility dealer. Upon expiration of a business license, the licensee shall either cease business operations, or provide evidence of a valid business license. The automotive mobility dealer's license shall be invalid during the period of time without a valid business license.

Authority: T.C.A. §§ 55-17-107, 55-17-111 and 55-17-302.

0960-05-.03 Liability Insurance and Worker's Compensation.

- (1) An applicant for an automotive mobility dealer license shall submit to the Commission with each application for license a certificate of comprehensive garage liability insurance which covers all premises and operations as listed in the application for license, in a minimum amount of coverage of Five Hundred Thousand Dollars (\$500,000.00) per occurrence.
- (2) The minimum required coverage must remain and continue in force for as long as the automotive mobility dealer remains licensed. Upon notice of cancellation, the licensee shall either cease business operations until proof of minimum coverage is provided, or provide evidence of minimum coverage from another provider.
- (3) All automotive mobility dealers shall comply with the applicable workers' compensation laws of the State of Tennessee.

Authority: T.C.A. §§ 55-17-107, 55-17-111 and 55-17-302.

0960-05-.04 Primary Business Activity.

All applicants for an automotive mobility dealer license shall provide a statement to the Commission that the applicant intends to be engaged primarily as an automotive mobility dealer.

Authority: T.C.A. §§ 55-17-107, 55-17-111 and 55-17-302.

0960-05-.05 Signs.

All automotive mobility dealers shall install signs at their established place of business identifying them as an automotive mobility dealer. Such signs shall consist of letters no less than eight (8) inches in height and shall not advertise any other business or product.

Authority: T.C.A. §§ 55-17-107 and 55-17-302.

0960-05-.06 Automotive Mobility Dealer Facilities.

The following minimum requirements apply to all automotive mobility dealer facilities:

- (1) The facility must be physically separate and apart from any other businesses and shall not include any private residence, tent or temporary stand. The facility may be connected to another business facility provide there is a permanent wall from floor to ceiling between the two businesses and the motor vehicle facility has a separate outside entrance and exit. Any doors between the businesses shall be permanently sealed.
- (2) The facility shall contain adequate office space (a minimum of 288 square feet) for processing sales and purchases of adapted vehicles. The facility shall also contain restroom accommodations.
- (3) The facility shall have a primary telephone number listed in the local directory under the name of the dealership. Mobile and/or cellular telephones are not acceptable as the primary business telephone. The primary phone number of the dealership shall be posted either on the door to the dealership, in a window of the dealership or on the dealership's sign.
- (4) The facility shall have immediate and contiguous access to and exclusive dedicated use of an adapted vehicle storage or display lot capable of accommodating fifteen (15) adapted vehicles of the dealership's product line. A lot shall consist of compacted gravel, chert, stone, or similar materials and shall not include public lands, unimproved land or residential driveways. The facility shall also contain a minimum of three (3) parking spots dedicated for customer parking.

Authority: T.C.A. §§ 55-17-107, 55-17-114 and 55-17-302.

0960-05-.07 Reasonable Business Hours.

All automotive mobility dealers shall be open at their established place of business during reasonable business hours, and these hours shall be posted either on the door to the dealership, in a window of the dealership or on the dealership's sign. For this section, "reasonable business hours" means at least three days a week for a minimum of twelve hours (12) total during the week. The reasonable business hours must be between 8:00 a.m. and 7:00 p.m., and at least eight (8) of the hours must be on Monday, Tuesday, Wednesday, Thursday or Friday.

Authority: T.C.A. §§ 55-17-107 and 55-17-302.

0960-05-.08 Automotive Mobility Dealer Applications and Requirements.

- (1) An applicant for an automotive mobility dealer license shall comply with the same requirements as a motor vehicle dealer in T.C.A. § 55-17-111 and shall provide the Commission with all information required by this section.
- (2) Applicants are required to provide the Commission, and keep current, the names of any inventory financiers, i.e. "floor planners" used by the dealership.
- (3) An automotive mobility dealer applicant shall provide to the Commission a compiled financial statement indicating a minimum net worth of at least Fifty Thousand Dollars (\$50,000.00). The compiled financial statement must be prepared in accordance with generally accepted accounting principles by a certified public accountant or public accountant dated not earlier than twelve (12) months prior to the date of the application and a copy of the same must be furnished to the Commission along with any changes to the statement.
- (4) An applicant for an automotive mobility dealer license shall certify compliance with the following:
 - (a) T.C.A. § 55-9-201 et seq. regarding the required equipment of vehicles operated in Tennessee;
 - (b) 49 C.F.R. Part 567 regarding the modification and alteration of motor vehicles;
 - (c) 49 C.F.R. Part 571, Federal Motor Vehicle Safety Standards; and
 - (d) 49 C.F.R. Part 595 regarding make inoperative exemptions.
- (5) An automotive mobility dealer applicant that actually modifies motor vehicles to create adapted vehicles, installs mobility equipment, or services or repairs adapted vehicles or mobility equipment shall certify:
 - (a) That all mobility equipment and materials utilized in the modification, installation, servicing or repair comply with applicable federal and state guidelines, as set forth in paragraph (4) of this rule and;
 - (b) That the relevant personnel of the automotive mobility dealer have been trained and certified, if applicable, by the equipment manufacturers or other competent authority with regard to the modification, installation, repair or servicing.
- (6) Prior to the delivery of an adapted vehicle to a customer, an automotive mobility dealer shall:
 - (a) Verify that the customer received appropriate training regarding operation and usage of the adapted vehicle purchased;
 - (b) Verify that the customer received a driver evaluation regarding operation and usage of the adapted vehicle purchased to ensure his/her ability to operate the vehicle in a safe manner; and
 - (c) Retain a record of compliance with the requirements of Rule 0960-05-.08(5)(a) & (b) as part of its business record.

Authority: T.C.A. §§ 55-17-107, 55-17-111 and 55-17-302.

0960-05-.09 Denial, Suspension, or Revocation of License.

(1) The Commission may deny an application for a license or revoke or suspend the license of an automotive mobility dealer who:

(a) Fails to comply with the application provisions and requirements of Rule 0960-05-.08;

(b) Violates any provision of T.C.A. § 55-17-114 (a) & (b); or

(c) Accepts on consignment at any given time more than two (2) new untitled motor vehicles of a specific line make by any franchised motor vehicle dealer.

(2) The Commission shall, after a notice of hearing, revoke the license of an automotive mobility dealer if it determines that the dealer has sold or modified a vehicle that does not comply with the following:

(a) T.C.A. § 55-9-201 et seq. regarding the required equipment of vehicles operated in Tennessee;

(b) 49 C.F.R. Part 567 regarding the modification and alteration of motor vehicles;

(c) 49 C.F.R. Part 571, Federal Motor Vehicle Safety Standards; and

(d) 49 C.F.R. Part 595 regarding make inoperative exemptions.

Authority: T.C.A. §§ 55-17-107, 55-17-114, 55-17-302, and 55-17-303.