

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 07-14-16

Rule ID(s): 6247

File Date: 7/7/16

Effective Date: 10/5/16

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission:	Tennessee Motor Vehicle Commission
Division:	Department of Commerce and Insurance
Contact Person:	Matthew Reddish
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-741-3072
Email:	Matthew.E.Reddish@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-.06(2)	Notice of Termination, Cancellation or Non-Renewal

Chapter 0960-01
General Rules
Amendments

Rule 0960-01-.06 [NOTICE OF TERMINATION, CANCELLATION OR NON-RENEWAL] is amended by adding the following language as a new paragraph (2) and renumbering the existing paragraph (2) as paragraph (3) so that, as amended, the rule shall read:

- (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) Where a manufacturer, distributor, manufacturer or distributor branch or manufacturer or distributor representative has issued the notice of termination or non-renewal as provided above, has taken such action without issuing the notice, or has otherwise threatened to terminate the dealership, the affected dealer shall have the right, within the 60 day period following receipt of the notice or action, to petition the Tennessee Motor Vehicle Commission for a declaratory order in accordance with T.C.A. § 4-5-223 as to the applicability of T.C.A. § 55-17-114(c)(3) and/or (c)(21) to the proposed or threatened termination. Upon the filing of such petition, the Tennessee Motor Vehicle Commission shall convene a contested case hearing for the purpose of determining whether the action of the manufacturer or distributor is (a) unfair, (b) without due regard to the equities, or (c) without just provocation as provided within T.C.A. § 55-17-114(c)(3) and/or (c)(21). The manufacturer or distributor thereof shall be served with the petition and shall be a party to the contested case hearing.
- (3) 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 and 55-17-114

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

Board Member (if required)	Aye	No	Abstain	Absent	Signature
Eddie Roberts	X				
Stan Norton	X				
Ronnie Fox	X				
Nathaniel Jackson	X				
Don Parr	X				
Steve Tomaso			X		
Lynn Webb	X				
B. Joe Clayton				X	
Ronald Fox	X				
Stan McNabb				X	
Reed Trickett	X				
Jim Galvin Jr.	X				
John S. Murrey	X				
Donnie Hatcher				X	
Farrar Schaeffer Vaughan	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Motor Vehicle Commission on 01/11/2016, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 6-10-16

Signature: Matthew Reddish

Name of Officer: Matthew Reddish

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: June 10, 2016

Notary Public Signature: Vanessa Huntsman

My commission expires on: Nov. 21, 2017

Rules of the Tennessee Motor Vehicle Commission
Chapter 0960-01 General Rules
Rule 0960-01-.06 Notice of Termination, Cancellation or Non-Renewal

All proposed 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.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
6/28/2016
Date

Department of State Use Only

Filed with the Department of State on: 7/7/16

Effective on: 10/5/16

Tre Hargett
Tre Hargett
Secretary of State

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PUBLICATIONS

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.

Statements:

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

It is believed that clarifying the availability of the protest process for a motor vehicle dealer will directly benefit franchised motor vehicle dealers. There are approximately 414 licensed franchised motor vehicle dealers in Tennessee that will be substantially impacted by this rule in a positive way.

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

This rule is not expected to have any substantial reporting, recordkeeping or other administrative costs.

(3) A statement of the probable effect on impacted small businesses and consumers.

This rule is expected to have a positive impact on small businesses by providing clarification regarding protests of terminations.

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

The Commission believes that this change is not burdensome, intrusive or costly and – as such – there do not appear to be any alternatives that would reasonably be expected to be less burdensome.

(5) A comparison of the proposed rule with any federal or state counterparts.

Federal law allows dealer suit against manufacturer under 15 U.S.C. § 1222. No known state counterpart.

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

Exemption from these rules would not be expected to be beneficial for small businesses, as existing standards are either stricter or less clear.

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)

This rule has no projected 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 T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule is proposed in order to clarify protest procedures regarding the termination or non-renewal of the franchise of an existing motor vehicle dealer.

- (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;

This rule is not mandated by any federal or state law or regulation.

- (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 and manufacturers are most directly affected by these rules. Manufacturers may urge rejection of this rule or may remain neutral. Dealers will urge adoption.

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

The creation of this rule was prompted by the Davidson County Chancery Court's decision in *Kia Motors America, Inc. v. Tennessee Motor Vehicle Commission, et al.*, case no. 13-860-II, which cast doubt on the Commission's authority to hear a request for declaratory relief from a local Kia dealership, which contended that its franchise was being terminated or threatened with termination in violation of Tenn. Code Ann. § 55-17-114(c)(3) and (21). The local dealership and the manufacturer ultimately settled the lawsuit, but the court's ruling prompted the Commission to create a rule clarifying the procedure to be followed by any dealer contending that a manufacturer's termination or threatened termination of the dealer's franchise violated the statute.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There is no expected substantial impact on state or local government revenue and expenditures.

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

Paula Shaw
500 James Robertson Parkway
Davy Crockett Tower 5th Floor
Nashville, TN 37243
(615) 741-2711

Matthew Reddish
500 James Robertson Parkway
Davy Crockett Tower 5th Floor
Nashville, TN 37243
(615) 770-0089

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

Paula Shaw, Executive Director, Motor Vehicle Commission
Matthew Reddish, Assistant General Counsel

(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

Paula Shaw 500 James Robertson Parkway Davy Crockett Tower 5 th Floor Nashville, TN 37243 (615) 741-2711	Matthew Reddish 500 James Robertson Parkway Davy Crockett Tower 5 th Floor Nashville, TN 37243 (615) 770-0089
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None

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Proposed Rule(s) Filing Form REDLINE

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

Agency/Board/Commission:	Tennessee Motor Vehicle Commission
Division:	Department of Commerce and Insurance
Contact Person:	Matthew Reddish
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-741-3072
Email:	Matthew.E.Reddish@tn.gov

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Chapter Number	Chapter Title
0960-01	General Rules
Rule Number	Rule Title
0960-01-.06(2)	Notice of Termination, Cancellation or Non-Renewal

Chapter 0960-01
General Rules
Amendments

Rule 0960-01-.06 [NOTICE OF TERMINATION, CANCELLATION OR NON-RENEWAL] is amended by adding the following language as a new paragraph (2) and renumbering the existing paragraph (2) as paragraph (3) so that, as amended, the rule shall read:

- (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) Where a manufacturer, distributor, manufacturer or distributor branch or manufacturer or distributor representative has issued the notice of termination or non-renewal as provided above, has taken such action without issuing the notice, or has otherwise threatened to terminate the dealership, the affected dealer shall have the right, within the 60 day period following receipt of the notice or action, to petition the Tennessee Motor Vehicle Commission for a declaratory order in accordance with T.C.A. § 4-5-223 as to the applicability of T.C.A. § 55-17-114(c)(3) and/or (c)(21) to the proposed or threatened termination. Upon the filing of such petition, the Tennessee Motor Vehicle Commission shall convene a contested case hearing for the purpose of determining whether the action of the manufacturer or distributor is (a) unfair, (b) without due regard to the equities, or (c) without just provocation as provided within T.C.A. § 55-17-114(c)(3) and/or (c)(21). The manufacturer or distributor thereof shall be served with the petition and shall be a party to the contested case hearing.
- (2)(3) 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 and 55-17-114

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

Board Member (if required)	Aye	No	Abstain	Absent	Signature
Eddie Roberts	X				
Stan Norton	X				
Ronnie Fox	X				
Nathaniel Jackson	X				
Don Parr	X				
Steve Tomaso			X		
Lynn Webb	X				
B. Joe Clayton				X	
Ronald Fox	X				
Stan McNabb				X	
Reed Trickett	X				
Jim Galvin Jr.	X				
John S. Murrey	X				
Donnie Hatcher				X	
Farrar Schaeffer Vaughan	X				

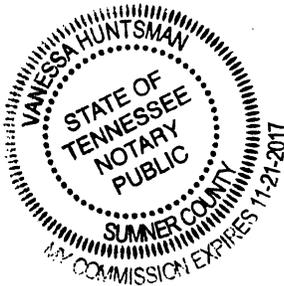
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Motor Vehicle Commission on 01/11/2016, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 6-10-16

Signature: *Matthew Reddish*

Name of Officer: Matthew Reddish

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: June 10, 2016

Notary Public Signature: *Vanessa Huntsman*

My commission expires on: Nov. 21, 2017

Rules of the Tennessee Motor Vehicle Commission
Chapter 0960-01 General Rules
Rule 0960-01-.06 Notice of Termination, Cancellation or Non-Renewal

All proposed 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.

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

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.

Statements:

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

It is believed that clarifying the availability of the protest process for a motor vehicle dealer will directly benefit franchised motor vehicle dealers. There are approximately 414 licensed franchised motor vehicle dealers in Tennessee that will be substantially impacted by this rule in a positive way.

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

This rule is not expected to have any substantial reporting, recordkeeping or other administrative costs.

(3) A statement of the probable effect on impacted small businesses and consumers.

This rule is expected to have a positive impact on small businesses by providing clarification regarding protests of terminations.

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

The Commission believes that this change is not burdensome, intrusive or costly and – as such – there do not appear to be any alternatives that would reasonably be expected to be less burdensome.

(5) A comparison of the proposed rule with any federal or state counterparts.

Federal law allows dealer suit against manufacturer under 15 U.S.C. § 1222. No known state counterpart.

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

Exemption from these rules would not be expected to be beneficial for small businesses, as existing standards are either stricter or less clear.

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)

This rule has no projected 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 T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule is proposed in order to clarify protest procedures regarding the termination or non-renewal of the franchise of an existing motor vehicle dealer.

- (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;

This rule is not mandated by any federal or state law or regulation.

- (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 and manufacturers are most directly affected by these rules. Manufacturers may urge rejection of this rule or may remain neutral. Dealers will urge adoption.

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

The creation of this rule was prompted by the Davidson County Chancery Court's decision in *Kia Motors America, Inc. v. Tennessee Motor Vehicle Commission, et al.*, case no. 13-860-II, which cast doubt on the Commission's authority to hear a request for declaratory relief from a local Kia dealership, which contended that its franchise was being terminated or threatened with termination in violation of Tenn. Code Ann. § 55-17-114(c)(3) and (21). The local dealership and the manufacturer ultimately settled the lawsuit, but the court's ruling prompted the Commission to create a rule clarifying the procedure to be followed by any dealer contending that a manufacturer's termination or threatened termination of the dealer's franchise violated the statute.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There is no expected substantial impact on state or local government revenue and expenditures.

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

Paula Shaw 500 James Robertson Parkway Davy Crockett Tower 5 th Floor Nashville, TN 37243 (615) 741-2711	Matthew Reddish 500 James Robertson Parkway Davy Crockett Tower 5 th Floor Nashville, TN 37243 (615) 770-0089
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- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Paula Shaw, Executive Director, Motor Vehicle Commission
Matthew Reddish, Assistant General Counsel

(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.

None
