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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 (Tenn. Code Ann. § 4-5-205).**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 Auctioneer Commission
Division:	Regulatory Boards
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Agency/Board/Commission:	Tennessee Auctioneer Commission

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
0160-01	Regulations of Auctioneers
Rule Number	Rule Title
0160-01-.01	Duties of Auctioneer
0160-01-.05	Publication of Name
0160-01-.11	Civil Penalties
0160-01-.14	Fees
0160-01-.16	Non-Auctioneer Firm License Application
0160-01-.24	Notification of Change of Information
0160-01-.26	Escrow Account Requirement
0160-01-.27	Livestock Auction Sales
0160-01-.28	Online Auctions
0160-01-.29	Military Applicants

Chapter 0160-01
Regulations of Auctioneers

Amendments

Rule 0160-01-.01 Duties of Auctioneer is amended by amending and numbering the existing paragraph as paragraph (1) and adding a new paragraph (2), which shall read as follows:

- (1) The Auctioneer shall be responsible for the advertising and management of the sale and account for all proceeds therefrom and shall, over his or her signature, issue a closing statement to the seller or sellers.
- (2) No licensed auctioneer shall accept offers for hire to call bids at any auction held by an auction house, auction barn, or auction gallery that is not either:
 - (a) owned and operated by a licensed auctioneer holding a valid firm license; or
 - (b) licensed as a gallery pursuant to the provisions of T.C.A. § 62-19-125.

Authority: T.C.A. §§ 62-19-106 and 62-19-125.

Rule 0160-01-.05 Publication of Name is amended by deleting the phrase "name of its sponsoring auctioneer, and the auctioneer" in paragraph (2) and replacing it with the phrase "name of its principal auctioneer, and the principal auctioneer" so that, as amended, the paragraph shall read:

- (2) All advertising of an auction sale by an auction firm not owned by a licensed auctioneer shall include the name of its principal auctioneer, and the principal auctioneer shall attend all auction sales.

Authority: T.C.A. §§ 62-19-106 and 62-19-111.

Rule 0160-01-.11 Civil Penalties is amended by deleting the text of the rule in its entirety and substituting, instead, the following language so that, as amended, the rule shall read:

- (1) With respect to any person required to be licensed by the Commission, the Commission may assess a civil penalty against such person in accordance with the following schedule:

Violation	Penalty
T.C.A. § 62-19-102(a)(1)	0 - \$1,000
T.C.A. § 62-19-102(a)(2)	0 - \$1,000
T.C.A. § 62-19-102(a)(3)	0 - \$1,000
T.C.A. § 62-19-102(b)	0 - \$1,000
T.C.A. § 62-19-112(b)(1)	0 - \$1,000
T.C.A. § 62-19-112(b)(2)	0 - \$1,000
T.C.A. § 62-19-112(b)(3)	0 - \$1,000
T.C.A. § 62-19-112(b)(4)	0 - \$1,000
T.C.A. § 62-19-112(b)(5)	0 - \$1,000
T.C.A. § 62-19-112(b)(6)	0 - \$1,000
T.C.A. § 62-19-112(b)(7)	0 - \$1,000
T.C.A. § 62-19-112(b)(8)	0 - \$1,000
T.C.A. § 62-19-112(b)(9)	0 - \$1,000
T.C.A. § 62-19-112(b)(10)	0 - \$1,000
T.C.A. § 62-19-112(b)(11)	0 - \$1,000
T.C.A. § 62-19-112(b)(12)	0 - \$1,000

T.C.A. § 62-19-112(b)(13)	0 - \$1,000
T.C.A. § 62-19-125(a)	0 - \$1,000
T.C.A. § 62-19-125(b)	0 - \$1,000
T.C.A. § 62-19-128(b)	0 - \$1,000
T.C.A. § 62-19-128(c)	0 - \$1,000
T.C.A. § 62-19-128(d)	0 - \$1,000
T.C.A. § 62-19-128(e)	0 - \$1,000
T.C.A. § 62-19-128(f)	0 - \$1,000
Any Commission Rule or Order	0 - \$1,000

- (2) Each day of a continued violation under paragraph (1) constitutes a separate violation.
- (3) The Commission's administrative director and investigator, acting on behalf of the Commission, may issue citations to unlicensed individuals or entities in accordance with T.C.A. § 62-19-126 and the following schedule:

Violation	Penalty
T.C.A. § 62-19-102 (a) (1)	\$50-\$2,500
T.C.A. § 62-19-102 (a) (2)	\$50-\$2,500
T.C.A. § 62-19-102 (b)	\$50-\$2,500
T.C.A. § 62-19-125 (a)	\$50-\$2,500

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

Authority: T.C.A. §§ 56-1-308, 62-19-106, 62-19-116 and 62-19-126.

Rule 0160-01-.14 Fees is amended by deleting paragraph (6) in its entirety:

Authority: T.C.A. §§ 62-19-106(b).

Rule 0160-01-.16 Non-Auctioneer Firm License Application is amended by deleting the name and text of the rule in its entirety and substituting, instead, the following language so that, as amended, the name and rule shall read:

0160-01-.16 Non-Auctioneer Owned Firms.

- (1) A non-auctioneer owned firm is an auction firm which is not owned in any part by a person who holds a Tennessee auctioneer's license.
- (2) Every application by a business entity, including a limited liability company, corporation or partnership not principally engaged in the auction business, for an auction firm license or license renewal shall designate as the applicant a natural person who is an employee, owner, shareholder, partner, or member of the entity and meets the applicable requirements of T.C.A. § 62-19-111. The designated applicant shall be the individual responsible for the firm's license.

- (3) A non-auctioneer owned firm must also designate in its auction firm license application one (1) licensed auctioneer who shall serve as the firm's principal auctioneer. The principal auctioneer shall attend and, along with the firm, shall accept responsibility for all auctions conducted by the firm.
- (4) Any non-auctioneer owned firm must notify the Commission within ten (10) days of the death, resignation, termination or other extended absence of the firm's principal auctioneer. The firm shall have no longer than thirty (30) days from the death, resignation, termination or other extended absence within which to replace the principal auctioneer and must immediately notify the Commission in writing of the auctioneer's replacement. The firm shall not conduct any auctions until the Commission has received its designation of a new principal auctioneer.

Authority: T.C.A. §§ 62-19-102, 62-19-106, and 62-19-111.

Rule 0160-01-.24 Notification of Change of Information is amended by adding the following language as a new paragraph (2):

- (2) Any firm must notify the Commission within ten (10) days of the death, resignation, termination or other extended absence of the firm's principal auctioneer. The firm shall have no longer than thirty (30) days from the death, resignation, termination or other extended absence within which to replace the principal auctioneer and must immediately notify the Commission in writing of the auctioneer's replacement.

Authority: T.C.A. §§ 62-19-106 and 62-19-111.

Chapter 0160-01
Regulations of Auctioneers

New Rules

0160-01-.26 Escrow Account Requirement.

All licensed auction firms and galleries shall maintain an escrow or trustee account for all funds that belong to others coming into possession of the firm or gallery as a result of an auction sale.

Authority: T.C.A. §§ 62-19-106 and 62-19-112(b)(4).

0160-01-.27 Livestock Auction Sales.

- (1) Pursuant to T.C.A. § 62-19-103(8), the provisions of title 62, chapter 19 do not apply to any livestock auction sale regulated by the United States Department of Agriculture Packers & Stockyards Administration, if the sale uses:
 - (a) The shipper's proceeds account required by federal regulations; and
 - (b) A Tennessee licensed auctioneer.
- (2) Any operator of a livestock auction sale that is not registered with and regulated by the Packers & Stockyards Administration shall not qualify for the firm or gallery license exemption under T.C.A. § 62-19-103(8) and must be appropriately licensed.

- (3) Any person acting as an auction firm or gallery outside of a livestock auction regulated by the Packers & Stockyards Administration shall hold a Tennessee auction firm or gallery license and is subject to all statutes and rules of the Tennessee Auctioneer Commission notwithstanding such person's registration with the Packers & Stockyards Administration.
- (4) Nothing in this rule shall be construed as exempting any person acting as or advertising or representing to be an auctioneer or apprentice auctioneer from the licensure requirements of T.C.A. § 62-19-102.

Authority: T.C.A. §§ 62-19-102, 62-19-103, and 62-19-106.

0160-01-.28 Online Auctions.

Pursuant to the exemption in T.C.A. § 62-19-103(9), "timed listings" do not include listings that are extended or those in which a bidder has the opportunity to increase a bid beyond the original deadline.

Authority: T.C.A. §§ 62-19-102, 62-19-103, and 62-19-106.

0160-01-.29 Military Applicants

- (1) An applicant for licensure meeting the requirements of T.C.A. § 4-3-1304(d)(1) may:
 - (a) Be issued a license upon application and payment of all fees required for the issuance of a regular license of the same type if, in the opinion of the Commission, the requirements for licensure of such other state are substantially equivalent to that required in Tennessee; or
 - (b) Be issued a temporary permit as described herein if the Commission determines that the applicant's license does not meet the requirements for substantial equivalency, but that the applicant could perform additional acts, including – but not limited to – education, training, or experience, in order to meet the requirements for the license to be substantially equivalent. In that case, the Commission may issue a temporary permit upon application and payment of all fees required for issuance of a regular license of the same type which shall allow such person to perform services as if fully licensed for a set period of time that is determined to be sufficient by the Commission for the applicant to complete such requirements.
 - 1. After completing those additional requirements and providing the Commission with sufficient proof thereof as may be required, a full license shall be issued to the applicant with an issuance date of the date of the original issuance of the temporary permit and an expiration date as if the full license had been issued at that time.
 - 2. A temporary permit shall be issued for a period of less than the length of a renewal cycle for a full license.
 - 3. A temporary permit shall expire upon the date set by the Commission and shall not be subject to renewal except through the timely completion of the requirements for substantial equivalency as required by the Commission or by an extension of time granted for good cause by the Commission.
 - 4. Should an extension to a temporary permit cause the permit to be in effect longer than the renewal cycle of a full license, then the holder of the temporary permit

shall file a renewal application with such documentation and fees, including completion of continuing education, as are required by the Commission for all other renewals of a full license of the same type.

- (2) Military education, training, or experience completed by a person described at T.C.A. § 4-3-1304(d)(1)(B)(ii)(a)-(c) shall be accepted toward the qualifications, in whole or in part, to receive any license issued by the Commission under the Division of Regulatory Boards if such military education, training or experience is determined by the Commission to be substantially equivalent to the education, training, or experience required for the issuance of such license.
- (3) Renewal:
 - (a) Any licensee who is a member of the national guard or a reserve component of the armed forces of the United States called to active duty whose license expires during the period of activation shall be eligible to be renewed upon the licensee being released from active duty without:
 1. Payment of late fees or other penalties;
 2. Obtaining continuing education credits when:
 - (i) Circumstances associated with the person's military duty prevented the obtaining of continuing education credits and a waiver request has been submitted to the Commission; or
 - (ii) The person performs the licensed occupation as part of such person's military duties and provides documentation sufficient to demonstrate such to the Commission.
 3. Performing any other similar act typically required for the renewal of a license.
 - (b) The license shall be eligible for renewal pursuant to this paragraph for six (6) months from the person's release from active duty.
 - (c) Any person renewing under this paragraph shall provide the Commission such supporting documentation evidencing activation as may be required by the Commission prior to renewal of any license pursuant to this paragraph.

Authority: T.C.A. §§ 4-3-1304 and 62-19-106.

* 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)
Howard Phillips	X				
Jeff Morris	X				
Bobby Colson	X				
Brian Colyer	X				
Adam Lewis	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Auctioneer Commission on 10/06/2014, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/24/14

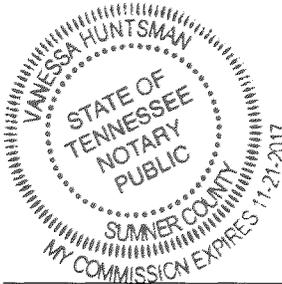
Rulemaking Hearing(s) Conducted on: (add more dates). 10/06/14

Date: August 11, 2016

Signature: Sarah M. Mathews

Name of Officer: SARAH M. MATHEWS

Title of Officer: ASSISTANT GENERAL COUNSEL



Subscribed and sworn to before me on: August 11, 2016

Notary Public Signature: Vanessa Huntsman

My commission expires on: Nov. 21, 2017

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.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter

8/29/2016
Date



Department of State Use Only

Filed with the Department of State on: 9/6/16

Effective on: 12/5/16

Tre Hargett
Tre Hargett
Secretary of State

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.

Comment 1

Rule 0160-01-.26 (Escrow Account Requirement)

There was a comment asking if the Commission would consider authorizing a waiver of the proposed escrow account requirement for licensees who do not handle funds that belong to others if such licensees filled out a form proscribed by the Board swearing or affirming that they do not handle client funds.

Agency Response to Comment 1: The agency stated that, although it appreciated the comment and might not be opposed in principle to such a waiver, it does not believe it has the legal authority to grant such a waiver. Therefore, the agency declined to amend the proposed rule language for Rule 0160-01-.26 as set forth in the Notice of Rulemaking Hearing in any way.

Comment 2

Rule 0160-01-.01 (Duties of Auctioneer)

There was a comment stating that, in Rule 0160-01-.01(1), that the pronoun "his" that appears in the rule is not appropriately gender neutral because the rule uses "his" instead of "his or her". The commenter asked if the Commission would consider amending its rules to use gender neutral pronouns where appropriate.

Agency Response to Comment 2: The agency agreed with the commenter and voted to change the language in Rule 0160-01-.01(1) from "his" to "his or her". The agency further stated that, in the future, if it is made aware of other instances of pronouns in its rules which are not appropriately gender neutral, it will address any such instances as necessary at that time.

Comment 3

Rule 0160-01-.24 (Notification of Change of Information)

There was a comment stating that the current Rule 0160-01-.24 allows for 60 days for a licensee to notify the Commission in writing of any information previously submitted to the Commission by the licensee. The commenter noted that proposed Rule 0160-01-.24(2) would only allow an auctioneer firm thirty (30) days to replace a principal auctioneer and to notify the Board in writing regarding that replacement. The commenter stated that he believes that 30 days is too short a time to recruit and hire a new principal auctioneer, and he asked if the Commission would consider leaving the current rule allowing 60 days to replace a principal auctioneer in place and not adopting the new 30 day replacement and notification period.

Agency Response to Comment 3: The agency stated that, although it appreciated the commenter's perspective, it believes that a principal auctioneer can be replaced in 30 days and that the Tennessee Real Estate Commission has a similar replacement and notification time frame in place that seems to work well. Accordingly, the agency declined to amend the proposed rule language for Rule 0160-01-.24(2) as set forth in the Notice of Rulemaking Hearing in any way.

Comment 4

Rule 0160-01-.28 (Online Auctions)

There was a comment asserting that the legislative intent behind T.C.A. § 62-19-103(9) regarding the exemption of online auctions with a fixed time ending was to take a "hands off" approach to online auctions, and as such, that even online auctions which allow for extensions of the bidding time should qualify for the exemption for online auctions set forth in T.C.A. § 62-19-103(9). Based on that assertion, the commenter requested that the Board not adopt proposed Rule 0160-01-.28, or in the alternative, that the Commission work with the legislature to codify any language regarding the exemption of online auctions directly into the Auctioneer statute.

Agency Response to Comment 4: The agency stated that, although it appreciated the commenter's opinion, it believes that the Auctioneer statute only authorizes an exemption for online auctions which have a fixed time ending. The Commission also made reference to Attorney General's Opinion 06-053 (issued March 27, 2006), which appears to hold that online auctions are exempt from the requirements of the Auctioneer statute, in part, because such auctions have a fixed time ending. Accordingly, the agency declined to amend the proposed rule language for Rule 0160-01-.28 as set forth in the Notice of Rulemaking Hearing in accordance with the commenter's suggestions.

Comment 5

Rule 0160-01-.26 (Escrow Account Requirement)

There was a comment requesting that the Commission consider amending certain language of proposed Rule 0160-01-.26, which, as set forth in the Notice of Rulemaking Hearing, reads as follows: "All licensed auction firms and galleries shall maintain an escrow or trustee account for all funds that belong to others but which are held by the firm or gallery as a result of an auction sale." Specifically, the commenter requested that the Commission change the word "all" to "any", that the Commission change the word "sale" to "contract or sale", and that the Commission change the words "but which are held by" to "coming into the possession of the firm or gallery".

Agency Response to Comment 5: The agency stated that it believes that the words "all" and "sale" are clear, appropriate, and accurately reflect the agency's regulatory authority as granted by the Auctioneer statute. As such, the Commission declined to make those two changes as requested by the commenter. However, the Commission agrees with the commenter that the words "coming into the possession of the firm or gallery" are clearer and more accurate than the words "but which are held by". Therefore, the Commission voted to amend proposed Rule 0160-01-.26 to read as follows: "All licensed auction firms and galleries shall maintain an escrow or trustee account for all funds that belong to others coming into the possession of the firm or gallery as a result of an auction sale."

Comment 6

Rule 0160-01-.27 (Livestock Auction Sales)

There was a comment requesting that the Commission consider striking (3) of proposed Rule 0160-01-.27 as set forth in the Notice of Rulemaking Hearing, which reads as follows: "If the operator of a livestock auction sale that is registered with and regulated by the Packers & Stockyards Administration sells any items other than livestock at a regulated livestock auction and the proceeds are deposited into the shipper's proceeds account, then neither a Tennessee auction firm nor a Tennessee auction gallery is required. Any such auction must still be conducted by a Tennessee licensed auctioneer." The commenter expressed concern that this language would allow livestock auctioneers to auction personal property without being appropriately licensed by the Commission, thereby creating a risk of harm to the public if livestock auctioneers were allowed to auction personal property without being properly licensed.

Agency Response to Comment 6: The agency stated that it agrees with the commenter's concerns. Accordingly, the Commission voted to strike paragraph (3) from proposed Rule 0160-01-.27 and to renumber paragraphs (4) and (5) as paragraphs (3) and (4).

Comment 7

Rule 0160-01-.28 (Online Auctions)

There was a comment requesting that, for the sake of grammatical correctness, the Commission consider amending the language of proposed Rule 0160-01-.28 as set forth in the Notice of Rulemaking Hearing, which reads as follows: "If the time for an online only auction with a fixed bidding time is extended beyond the online auction's fixed ending time, then the auction and the person conducting the auction are not included within the exemption specified at T.C.A. § 62-19-103, and the statutes and rules of the Tennessee Auctioneer Commission shall govern the online auction." The commenter requested that proposed Rule 0160-01-.28 be amended to read as follows: "If the time for an online-only auction with a fixed-bidding time is extended beyond the fixed-ending time of the online-only auction, then the auction and the person conducting the auction are not included within the exemption specified at T.C.A. § 62-19-103(9), and the statutes and rules of the Tennessee Auctioneer Commission shall govern the online auction."

Agency Response to Comment 7: The agency stated that it agrees with the commenter, and voted to amend SS-7039 (November 2014)

the language of proposed Rule 0160-01-.28 as requested by the commenter.

Comment 8

Rule 0160-01-.01 (Duties of Auctioneer)

There was a comment requesting that the Commission speak to the necessity and scope of proposed Rule 0160-01-.01(2) as set forth in the Notice of Rulemaking Hearing, which reads as follows: "No licensed auctioneer shall accept offers for hire to call bids at any auction held by an auction house, auction barn, or auction gallery that is not either: (a) owned and operated by a licensed auctioneer holding a valid firm license; or (b) licensed as a gallery pursuant to the provisions of T.C.A. § 62-19-125."

Agency Response to Comment 8: The agency stated that the authority for this proposed rule is T.C.A. § 62-19-125, which states that a licensed auctioneer may only call bids at a licensed auction firm or a licensed gallery. The commenter stated that she now understands the language of this proposed rule more clearly, and that she does not have any suggested changes to the proposed rule.

Comment 9

Rule 0160-01-.26 (Escrow Account Requirement)

There was a comment requesting that the Commission consider amending the language of proposed Rule 0160-01-.26 as set forth in the Notice of Rulemaking Hearing, which reads as follows: "All licensed auction firms and galleries shall maintain an escrow or trustee account for all funds that belong to others but which are held by the firm or gallery as a result of an auction sale." The commenter requested that the Commission add language from T.C.A. § 62-19-112(b)(4) such that proposed Rule 0160-01-.26 reads as follows: "All licensed auction firms and galleries shall maintain an escrow or trustee account for all funds that belong to others but which are held by the firm or gallery as a result of an auction sale, provided, however, that nothing in this section shall be construed to require an auto auction as defined in § 55-17-102(2)(A) to maintain or use an escrow account when the auction does not accept and deposit funds of others."

Agency Response to Comment 9: The agency stated that T.C.A. § 62-19-112(b)(4) is sufficiently clear to provide notice to the public and to auctioneer licensees that "an auto auction as defined in § 55-17-102(2)(A) to maintain or use an escrow account when the auction does not accept and deposit funds of others" is not required to maintain or use an escrow account. Therefore, the Commission declined to adopt the amendatory language to proposed Rule 0160-01-.26 as suggested by this commenter.

Comment 10

Rule 0160-01-.28 (Online Auctions)

There was a comment thanking the Commission for proposing and approving proposed Rule 0160-01-.28 regarding online auctions.

Agency Response to Comment 10: The agency thanked the commenter for her comments and asked if she required any further response to her comment. The commenter stated that she required no further response to her comment and simply wished to express her thanks to the Commission for their efforts to regulate online auctions.

Comment 11

Rule 0160-01-.28 (Online Auctions)

There was a comment asserting that proposed Rule 0160-01-.28 would require the commenter, who has been selling titled vehicles to the public online under his auctioneer license and his auctioneer firm license, to obtain a public motor vehicle auctioneer's license (which the commenter does not believe he needs under the current law and rules). The commenter stated that his business is more profitable when he doesn't have to have a fixed closing time for his online auto auctions. Accordingly, while the commenter said he would obtain any additional licenses to continue operating his business as necessary, he said he simply wished to bring his situation to the Commission's attention prior to approval of this proposed rule.

Agency Response to Comment 11: The agency stated that, although it appreciated the commenter's opinion, it believes that proposed Rule 0160-01-.28 accurately reflects the Commission's interpretation of the online auction

exemption as set forth in T.C.A. § 62-19-103(9). Accordingly, the agency voted to move forward with the language for proposed Rule 0160-01-.28 as set forth in Comment 7 (see above).

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. The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules:

There will be no known overlap, duplication, or conflict with other federal, state, or local governmental rules.

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

The rules are clear, concise, and unambiguous. Further, the rules are not open to different interpretations.

3. The establishment of flexible compliance and reporting requirements for small businesses:

These rules provide uniform and reasonable requirements, both for licensees of the Tennessee Auctioneer Commission, as well as those individuals who wish to be licensed with the Tennessee Auctioneer Commission. These rules assist with ensuring the welfare and safety of the citizens of Tennessee.

4. The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses:

These rules do not establish additional schedules or deadlines compliance or reporting requirements for licensees. These rules allow military personnel who are engaged in small business flexible reporting requirements with regard to their licenses.

5. The consolidation or simplification of compliance or reporting requirements for small businesses:

These rules, some of which amend current rules and some of which are new rules, are intended to provide clarification and do not complicate compliance or reporting requirements for small businesses.

6. The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule:

The performance standards in these rules aid in protecting the public's health, safety and welfare. These rules do not establish design or operational standards.

7. The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

These rules do not result in the unnecessary creation of entry barriers or other effects that will stifle entrepreneurial activity, curb innovation, or increase costs.

Impact on Local Governments

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

The proposed rule changes are not projected to have any 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;

Amendment to Rule 0160-01-.01 Duties of an Auctioneer: This amendment will number the existing paragraph within the rule as paragraph (1) and add a new paragraph (2) which will state that a licensed auctioneer shall not accept offers for hire to call bids at any auction held by an auction house, auction barn, or auction gallery that is not the holder of valid auction gallery license.

Amendment to Rule 0160-01-.05 Publication of Name: This amendment will change the reference to "sponsoring auctioneer" and "auctioneer" within the existing rule to instead reference the "principal auctioneer."

Amendment to Rule 0160-01-.11 Civil Penalties: This amendment will add a civil penalty range of 0-\$1,000 to violations of T.C.A. § 62-19-125(a) and (b) as well as any Commission rule or order. The amendment also adds a provision stating that each day of a continued violation may constitute a separate violation.

Amendment to Rule 0160-01-.14 Fees: This amendment will delete a paragraph which provided for a penalty fee of one hundred dollars (\$100.00) for any notification of change of information which is made to the Commission more than sixty (60) days after the effective date of the new information.

Amendment to Rule 0160-01-.16 Non-Auctioneer Firm License Application: This amendment will specify that any non-auctioneer owned firm must register one (1) licensed auctioneer who will serve as the firm's principal auctioneer and must attend and accept responsibility for all auctions. The amendment further states that the Commission must be notified within ten (10) days of the absence of the non-auctioneer owned firm's principal auctioneer, and a new principal auctioneer must be in place (and the Commission notified) on or before thirty (30) days have passed. The amendment specifies that no auctions shall be conducted by the non-auctioneer owned firm until a new principal auctioneer is placed.

Amendment to Rule 0160-01-.24 Notification of Change of Information: This amendment adds a new paragraph (2) which states that the Commission must be notified within ten (10) days of the absence of a firm's principal auctioneer, and a new principal auctioneer must be in place (and the Commission notified) on or before thirty (30) days have passed.

New Rule 0160-01-.26 Escrow Account Requirement: This proposed new rule states that all auction firms and galleries must have an escrow or trustee account for all funds which are held which belong to others as a result of an auction sale.

New Rule 0160-01-.27 Livestock Auction Sales: This proposed new rule states that the licensing exemption found within T.C.A. § 62-19-103 does not apply to any livestock auction which is not registered and regulated by the packers and stockyards administration. Further, this proposed new rule states that if a registered livestock auction facility also sells additional items at a regulated auction and the proceeds are deposited into a packers and stockyards account, then no firm or gallery license is necessary, but the person conducting the auction must hold an auctioneer's license. Finally, this proposed new rule states that if a regulated livestock auction conducts merchandise, equipment, or personal property auctions which are not held during a livestock auction, then the facility must have a firm or gallery license, and the person conducting said auction must have an auctioneer's license.

New Rule 0160-01-.28 Online Auctions: This proposed new rule states that if the time for a fixed time online only auction is extended beyond the stated ending time, then the auction and the person conducting the auction are no longer included in the licensing exemption found at T.C.A. § 62-19-103.

New Rule 0160-01-.29 Military Applicants: This proposed new rule provides for the expedited processing of applications for certain military personnel and their spouses, the recognition of education earned through military service, and the allowance of license renewal for six (6) months from the release from active duty without penalty when certain specified circumstances are met.

- (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;

T.C.A. § 4-3-1304 requires each program attached to the division of regulatory boards (which includes the Tennessee Auctioneer Commission) to promulgate rules and regulations to effectuate the purposes of this act. The primary purpose of T.C.A. § 4-3-1304 is for each program attached to the division of regulatory boards to promulgate rules establishing an expedited license application and/or renewal process for certain members of the military. The proposed amendment to Rule 0160-01-.29 is promulgated in response to T.C.A. § 4-3-1304.

- (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;

The proposed amendments to the Tennessee Auctioneer Commission rules will affect auctioneers and auction firms licensed by the Commission. Although there were several public comments received as part of this rulemaking hearing process, it does not appear that substantial opposition to these proposed rule changes exists among the individuals and businesses most directly affected by the proposed rule changes.

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

Although it does not appear to be directly on point, Attorney General Opinion 06-053 (issued March 27, 2006) does contain some language regarding potential interpretation of the Auctioneer statute regarding online auctions.

- (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;

The anticipated fiscal impact to state and local government revenues and expenditures of these proposed rule changes is anticipated to be minimal.

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

Sarah M. Mathews, Assistant General Counsel for the Tennessee Auctioneer Commission

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

Sarah M. Mathews, Assistant General Counsel for the Tennessee Auctioneer Commission

- (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, Nashville, TN 37243; Phone: (615) 532-6303; E-Mail: Sarah.Mathews@tn.gov

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

N/A

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Rule ID(s): _____
File Date: _____
Effective Date: _____

Rulemaking Hearing Rule(s) Filing Form - REDLINE

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

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 Auctioneer Commission
Division:	Regulatory Boards
Contact Person:	Sarah M. Mathews
Address:	500 James Robertson Parkway, Nashville, Tennessee 37243
Phone:	(615) 741-3072
Email:	Sarah.Mathews@tn.gov
Agency/Board/Commission:	Tennessee Auctioneer Commission

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
0160-01	Regulations of Auctioneers
Rule Number	Rule Title
0160-01-.01	Duties of Auctioneer
0160-01-.05	Publication of Name
0160-01-.11	Civil Penalties
0160-01-.14	Fees
0160-01-.16	Non-Auctioneer Firm License Application
0160-01-.24	Notification of Change of Information
0160-01-.26	Escrow Account Requirement
0160-01-.27	Livestock Auction Sales
0160-01-.28	Online Auctions
0160-01-.29	Military Applicants

Chapter 0160-01
Regulations of Auctioneers

Amendments

Rule 0160-01-.01 Duties of Auctioneer is amended by amending and numbering the existing paragraph as paragraph (1) and adding a new paragraph (2), which shall read as follows:

- (1) The Auctioneer shall be responsible for the advertising and management of the sale and account for all proceeds therefrom and shall, over his or her signature, issue a closing statement to the seller or sellers.
- (2) No licensed auctioneer shall accept offers for hire to call bids at any auction held by an auction house, auction barn, or auction gallery that is not either:
 - (a) owned and operated by a licensed auctioneer holding a valid firm license; or
 - (b) licensed as a gallery pursuant to the provisions of T.C.A. § 62-19-125.

Authority: T.C.A. §§ 62-19-106 and 62-19-125.

Rule 0160-01-.05 Publication of Name is amended by deleting the phrase "name of its sponsoring auctioneer, and the auctioneer" in paragraph (2) and replacing it with the phrase "name of its principal auctioneer, and the principal auctioneer" so that, as amended, the paragraph shall read:

- (2) All advertising of an auction sale by an auction firm not owned by a licensed auctioneer shall include the name of its ~~sponsoring~~ principal auctioneer, and the principal auctioneer shall attend all auction sales.

Authority: T.C.A. §§ 62-19-106 and 62-19-111.

Rule 0160-01-.11 Civil Penalties is amended by deleting the text of the rule in its entirety and substituting, instead, the following language so that, as amended, the rule shall read:

- (1) With respect to any person required to be licensed by the Commission, the Commission may assess a civil penalty against such person in accordance with the following schedule:

Violation	Penalty
T.C.A. § 62-19-102(a)(1)	0 - \$1,000
T.C.A. § 62-19-102(a)(2)	0 - \$1,000
T.C.A. § 62-19-102(a)(3)	0 - \$1,000
T.C.A. § 62-19-102(b)	0 - \$1,000
T.C.A. § 62-19-112(b)(1)	0 - \$1,000
T.C.A. § 62-19-112(b)(2)	0 - \$1,000
T.C.A. § 62-19-112(b)(3)	0 - \$1,000
T.C.A. § 62-19-112(b)(4)	0 - \$1,000
T.C.A. § 62-19-112(b)(5)	0 - \$1,000
T.C.A. § 62-19-112(b)(6)	0 - \$1,000
T.C.A. § 62-19-112(b)(7)	0 - \$1,000
T.C.A. § 62-19-112(b)(8)	0 - \$1,000
T.C.A. § 62-19-112(b)(9)	0 - \$1,000
T.C.A. § 62-19-112(b)(10)	0 - \$1,000
T.C.A. § 62-19-112(b)(11)	0 - \$1,000
T.C.A. § 62-19-112(b)(12)	0 - \$1,000

T.C.A. § 62-19-112(b)(13)	0 - \$1,000
T.C.A. § 62-19-125(a)	0 - \$1,000
<u>T.C.A. § 62-19-125(b)</u>	<u>0 - \$1,000</u>
T.C.A. § 62-19-128(b)	0 - \$1,000
T.C.A. § 62-19-128(c)	0 - \$1,000
T.C.A. § 62-19-128(d)	0 - \$1,000
T.C.A. § 62-19-128(e)	0 - \$1,000
T.C.A. § 62-19-128(f)	0 - \$1,000
<u>Any Commission Rule or Order</u>	<u>0 - \$1,000</u>

(2) Each day of a continued violation under paragraph (1) constitutes a separate violation.

(3) (2) The Commission's administrative director and investigator, acting on behalf of the Commission, may issue citations to unlicensed individuals or entities in accordance with T.C.A. § 62-19-126 and the following schedule:

Violation	Penalty
T.C.A. § 62-19-102 (a) (1)	\$50-\$2,500
T.C.A. § 62-19-102 (a) (2)	\$50-\$2,500
T.C.A. § 62-19-102 (b)	\$50-\$2,500
T.C.A. § 62-19-125 (a)	\$50-\$2,500

(4) (3) In determining the amount of any penalty to be assessed pursuant to this rule, the Commission may consider such factors as the following:

- (a) Whether the amount imposed will be a substantial economic deterrent to the violator;
- (b) The circumstances leading to the violation;
- (c) The severity of the violation and the risk of harm to the public;
- (d) The economic benefits gained by the violator as a result of non-compliance; and
- (e) The interest of the public.

Authority: T.C.A. §§ 56-1-308, 62-19-106, 62-19-116 and 62-19-126.

Rule 0160-01-.14 Fees is amended by deleting paragraph (6) in its entirety:

(6) ~~Any notification of change of information pursuant to rule 0160-01-.24 made to the Commission more than sixty (60) days after the effective date of the new information shall result in a penalty of one hundred dollars (\$100.00).~~

Authority: T.C.A. §§ 62-19-106(b).

Rule 0160-01-.16 Non-Auctioneer Firm License Application is amended by deleting the name and text of the rule in its entirety and substituting, instead, the following language so that, as amended, the name and rule shall read:

0160-01-.16 Non-Auctioneer Owned Firms LICENSE APPLICATION.

(1) A non-auctioneer owned firm is an auction firm which is not owned in any part by a person who holds a Tennessee auctioneer's license.

- ~~(2) (1) Upon application to the Commission for an auction firm license or renewal thereof by any business entity, including a limited liability company, corporation or partnership not engaged in the auction business as the entity's principal business, the applicant shall designate a natural person who is an employee, owner, shareholder, partner, or member of the entity, who meets the applicable requirements of T.C.A. § 62-19-111 and who will be responsible for such license. Every application by a business entity, including a limited liability company, corporation or partnership not principally engaged in the auction business, for an auction firm license or license renewal shall designate as the applicant a natural person who is an employee, owner, shareholder, partner, or member of the entity and meets the applicable requirements of T.C.A. § 62-19-111. The designated applicant shall be the individual responsible for the firm's license.~~
- ~~(3) (2) An Auction firm as described in paragraph (1), must have at least one (1) licensed auctioneer to conduct and call auctions for the firm at each location involved in auction sales. A non-auctioneer owned firm must also designate in its auction firm license application one (1) licensed auctioneer who shall serve as the firm's principal auctioneer. The principal auctioneer shall attend and, along with the firm, shall accept responsibility for all auctions conducted by the firm.~~
- ~~(4) Any non-auctioneer owned firm must notify the Commission within ten (10) days of the death, resignation, termination or other extended absence of the firm's principal auctioneer. The firm shall have no longer than thirty (30) days from the death, resignation, termination or other extended absence within which to replace the principal auctioneer and must immediately notify the Commission in writing of the auctioneer's replacement. The firm shall not conduct any auctions until the Commission has received its designation of a new principal auctioneer.~~

Authority: T.C.A. §§ 62-19-102, 62-19-106, and 62-19-111.

Rule 0160-01-.24 Notification of Change of Information is amended by adding the following language as a new paragraph (2):

- (2) Any firm must notify the Commission within ten (10) days of the death, resignation, termination or other extended absence of the firm's principal auctioneer. The firm shall have no longer than thirty (30) days from the death, resignation, termination or other extended absence within which to replace the principal auctioneer and must immediately notify the Commission in writing of the auctioneer's replacement.

Authority: T.C.A. §§ 62-19-106 and 62-19-111.

Chapter 0160-01
Regulations of Auctioneers

New Rules

0160-01-.26 Escrow Account Requirement.

All licensed auction firms and galleries shall maintain an escrow or trustee account for all funds that belong to others coming into the possession of the firm or gallery as a result of an auction sale.

Authority: T.C.A. §§ 62-19-106 and 62-19-112(b)(4).

0160-01-.27 Livestock Auction Sales.

- (1) Pursuant to T.C.A. § 62-19-103(8), the provisions of title 62, chapter 19 do not apply to any livestock auction sale regulated by the United States Department of Agriculture Packers & Stockyards Administration, if the sale uses:

- (a) The shipper's proceeds account required by federal regulations; and
 - (b) A Tennessee licensed auctioneer.
- (2) Any operator of a livestock auction sale that is not registered with and regulated by the Packers & Stockyards Administration shall not qualify for the firm or gallery license exemption under T.C.A. § 62-19-103(8) and must be appropriately licensed.
 - (3) Any person acting as an auction firm or gallery outside of a livestock auction regulated by the Packers & Stockyards Administration shall hold a Tennessee auction firm or gallery license and is subject to all statutes and rules of the Tennessee Auctioneer Commission notwithstanding such person's registration with the Packers & Stockyards Administration.
 - (4) Nothing in this rule shall be construed as exempting any person acting as or advertising or representing to be an auctioneer or apprentice auctioneer from the licensure requirements of T.C.A. § 62-19-102.

Authority: T.C.A. §§ 62-19-102, 62-19-103, and 62-19-106.

0160-01-28 Online Auctions.

Pursuant to the exemption in T.C.A. § 62-19-103(9), "timed listings" do not include listings that are extended or those in which a bidder has the opportunity to increase a bid beyond the original deadline.

Authority: T.C.A. §§ 62-19-102, 62-19-103, and 62-19-106.

0160-01-29 Military Applicants

- (1) An applicant for licensure meeting the requirements of T.C.A. § 4-3-1304(d)(1) may:
 - (a) Be issued a license upon application and payment of all fees required for the issuance of a regular license of the same type if, in the opinion of the Commission, the requirements for licensure of such other state are substantially equivalent to that required in Tennessee; or
 - (b) Be issued a temporary permit as described herein if the Commission determines that the applicant's license does not meet the requirements for substantial equivalency, but that the applicant could perform additional acts, including – but not limited to – education, training, or experience, in order to meet the requirements for the license to be substantially equivalent. In that case, the Commission may issue a temporary permit upon application and payment of all fees required for issuance of a regular license of the same type which shall allow such person to perform services as if fully licensed for a set period of time that is determined to be sufficient by the Commission for the applicant to complete such requirements.
 - 1. After completing those additional requirements and providing the Commission with sufficient proof thereof as may be required, a full license shall be issued to the applicant with an issuance date of the date of the original issuance of the temporary permit and an expiration date as if the full license had been issued at that time.
 - 2. A temporary permit shall be issued for a period of less than the length of a renewal cycle for a full license.

3. A temporary permit shall expire upon the date set by the Commission and shall not be subject to renewal except through the timely completion of the requirements for substantial equivalency as required by the Commission or by an extension of time granted for good cause by the Commission.
 4. Should an extension to a temporary permit cause the permit to be in effect longer than the renewal cycle of a full license, then the holder of the temporary permit shall file a renewal application with such documentation and fees, including completion of continuing education, as are required by the Commission for all other renewals of a full license of the same type.
- (2) Military education, training, or experience completed by a person described at T.C.A. § 4-3-1304(d)(1)(B)(ii)(a)-(c) shall be accepted toward the qualifications, in whole or in part, to receive any license issued by the Commission under the Division of Regulatory Boards if such military education, training or experience is determined by the Commission to be substantially equivalent to the education, training, or experience required for the issuance of such license.
- (3) Renewal:
- (a) Any licensee who is a member of the national guard or a reserve component of the armed forces of the United States called to active duty whose license expires during the period of activation shall be eligible to be renewed upon the licensee being released from active duty without:
 1. Payment of late fees or other penalties;
 2. Obtaining continuing education credits when:
 - (i) Circumstances associated with the person's military duty prevented the obtaining of continuing education credits and a waiver request has been submitted to the Commission; or
 - (ii) The person performs the licensed occupation as part of such person's military duties and provides documentation sufficient to demonstrate such to the Commission.
 3. Performing any other similar act typically required for the renewal of a license.
 - (b) The license shall be eligible for renewal pursuant to this paragraph for six (6) months from the person's release from active duty.
 - (c) Any person renewing under this paragraph shall provide the Commission such supporting documentation evidencing activation as may be required by the Commission prior to renewal of any license pursuant to this paragraph.

Authority: T.C.A. §§ 4-3-1304 and 62-19-106.

* 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)
Howard Phillips	X				
Jeff Morris	X				
Bobby Colson	X				
Brian Colyer	X				
Adam Lewis	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Auctioneer Commission on 10/06/2014, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/24/14

Rulemaking Hearing(s) Conducted on: (add more dates). 10/06/14

Date: _____

Signature: _____

Name of Officer: _____

Title of Officer: _____

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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.

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

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.

Comment 1

Rule 0160-01-.26 (Escrow Account Requirement)

There was a comment asking if the Commission would consider authorizing a waiver of the proposed escrow account requirement for licensees who do not handle funds that belong to others if such licensees filled out a form proscribed by the Board swearing or affirming that they do not handle client funds.

Agency Response to Comment 1: The agency stated that, although it appreciated the comment and might not be opposed in principle to such a waiver, it does not believe it has the legal authority to grant such a waiver. Therefore, the agency declined to amend the proposed rule language for Rule 0160-01-.26 as set forth in the Notice of Rulemaking Hearing in any way.

Comment 2

Rule 0160-01-.01 (Duties of Auctioneer)

There was a comment stating that, in Rule 0160-01-.01(1), that the pronoun "his" that appears in the rule is not appropriately gender neutral because the rule uses "his" instead of "his or her". The commenter asked if the Commission would consider amending its rules to use gender neutral pronouns where appropriate.

Agency Response to Comment 2: The agency agreed with the commenter and voted to change the language in Rule 0160-01-.01(1) from "his" to "his or her". The agency further stated that, in the future, if it is made aware of other instances of pronouns in its rules which are not appropriately gender neutral, it will address any such instances as necessary at that time.

Comment 3

Rule 0160-01-.24 (Notification of Change of Information)

There was a comment stating that the current Rule 0160-01-.24 allows for 60 days for a licensee to notify the Commission in writing of any information previously submitted to the Commission by the licensee. The commenter noted that proposed Rule 0160-01-.24(2) would only allow an auctioneer firm thirty (30) days to replace a principal auctioneer and to notify the Board in writing regarding that replacement. The commenter stated that he believes that 30 days is too short a time to recruit and hire a new principal auctioneer, and he asked if the Commission would consider leaving the current rule allowing 60 days to replace a principal auctioneer in place and not adopting the new 30 day replacement and notification period.

Agency Response to Comment 3: The agency stated that, although it appreciated the commenter's perspective, it believes that a principal auctioneer can be replaced in 30 days and that the Tennessee Real Estate Commission has a similar replacement and notification time frame in place that seems to work well. Accordingly, the agency declined to amend the proposed rule language for Rule 0160-01-.24(2) as set forth in the Notice of Rulemaking Hearing in any way.

Comment 4

Rule 0160-01-.28 (Online Auctions)

There was a comment asserting that the legislative intent behind T.C.A. § 62-19-103(9) regarding the exemption of online auctions with a fixed time ending was to take a "hands off" approach to online auctions, and as such, that even online auctions which allow for extensions of the bidding time should qualify for the exemption for online auctions set forth in T.C.A. § 62-19-103(9). Based on that assertion, the commenter requested that the Board not adopt proposed Rule 0160-01-.28, or in the alternative, that the Commission work with the legislature to codify any language regarding the exemption of online auctions directly into the Auctioneer statute.

Agency Response to Comment 4: The agency stated that, although it appreciated the commenter's opinion, it believes that the Auctioneer statute only authorizes an exemption for online auctions which have a fixed time ending. The Commission also made reference to Attorney General's Opinion 06-053 (issued March 27, 2006), which appears to hold that online auctions are exempt from the requirements of the Auctioneer statute, in part, because such auctions have a fixed time ending. Accordingly, the agency declined to amend the proposed rule language for Rule 0160-01-.28 as set forth in the Notice of Rulemaking Hearing in accordance with the commenter's suggestions.

Comment 5

Rule 0160-01-.26 (Escrow Account Requirement)

There was a comment requesting that the Commission consider amending certain language of proposed Rule 0160-01-.26, which, as set forth in the Notice of Rulemaking Hearing, reads as follows: "All licensed auction firms and galleries shall maintain an escrow or trustee account for all funds that belong to others but which are held by the firm or gallery as a result of an auction sale." Specifically, the commenter requested that the Commission change the word "all" to "any", that the Commission change the word "sale" to "contract or sale", and that the Commission change the words "but which are held by" to "coming into the possession of the firm or gallery".

Agency Response to Comment 5: The agency stated that it believes that the words "all" and "sale" are clear, appropriate, and accurately reflect the agency's regulatory authority as granted by the Auctioneer statute. As such, the Commission declined to make those two changes as requested by the commenter. However, the Commission agrees with the commenter that the words "coming into the possession of the firm or gallery" are clearer and more accurate than the words "but which are held by". Therefore, the Commission voted to amend proposed Rule 0160-01-.26 to read as follows: "All licensed auction firms and galleries shall maintain an escrow or trustee account for all funds that belong to others coming into the possession of the firm or gallery as a result of an auction sale."

Comment 6

Rule 0160-01-.27 (Livestock Auction Sales)

There was a comment requesting that the Commission consider striking (3) of proposed Rule 0160-01-.27 as set forth in the Notice of Rulemaking Hearing, which reads as follows: "If the operator of a livestock auction sale that is registered with and regulated by the Packers & Stockyards Administration sells any items other than livestock at a regulated livestock auction and the proceeds are deposited into the shipper's proceeds account, then neither a Tennessee auction firm nor a Tennessee auction gallery is required. Any such auction must still be conducted by a Tennessee licensed auctioneer." The commenter expressed concern that this language would allow livestock auctioneers to auction personal property without being appropriately licensed by the Commission, thereby creating a risk of harm to the public if livestock auctioneers were allowed to auction personal property without being properly licensed.

Agency Response to Comment 6: The agency stated that it agrees with the commenter's concerns. Accordingly, the Commission voted to strike paragraph (3) from proposed Rule 0160-01-.27 and to renumber paragraphs (4) and (5) as paragraphs (3) and (4).

Comment 7

Rule 0160-01-.28 (Online Auctions)

There was a comment requesting that, for the sake of grammatical correctness, the Commission consider amending the language of proposed Rule 0160-01-.28 as set forth in the Notice of Rulemaking Hearing, which reads as follows: "If the time for an online only auction with a fixed bidding time is extended beyond the online auction's fixed ending time, then the auction and the person conducting the auction are not included within the exemption specified at T.C.A. § 62-19-103, and the statutes and rules of the Tennessee Auctioneer Commission shall govern the online auction." The commenter requested that proposed Rule 0160-01-.28 be amended to read as follows: "If the time for an online-only auction with a fixed-bidding time is extended beyond the fixed-ending time of the online-only auction, then the auction and the person conducting the auction are not included within the exemption specified at T.C.A. § 62-19-103(9), and the statutes and rules of the Tennessee Auctioneer Commission shall govern the online auction."

Agency Response to Comment 7: The agency stated that it agrees with the commenter, and voted to amend SS-7039 (November 2014)

the language of proposed Rule 0160-01-.28 as requested by the commenter.

Comment 8

Rule 0160-01-.01 (Duties of Auctioneer)

There was a comment requesting that the Commission speak to the necessity and scope of proposed Rule 0160-01-.01(2) as set forth in the Notice of Rulemaking Hearing, which reads as follows: "No licensed auctioneer shall accept offers for hire to call bids at any auction held by an auction house, auction barn, or auction gallery that is not either: (a) owned and operated by a licensed auctioneer holding a valid firm license; or (b) licensed as a gallery pursuant to the provisions of T.C.A. § 62-19-125."

Agency Response to Comment 8: The agency stated that the authority for this proposed rule is T.C.A. § 62-19-125, which states that a licensed auctioneer may only call bids at a licensed auction firm or a licensed gallery. The commenter stated that she now understands the language of this proposed rule more clearly, and that she does not have any suggested changes to the proposed rule.

Comment 9

Rule 0160-01-.26 (Escrow Account Requirement)

There was a comment requesting that the Commission consider amending the language of proposed Rule 0160-01-.26 as set forth in the Notice of Rulemaking Hearing, which reads as follows: "All licensed auction firms and galleries shall maintain an escrow or trustee account for all funds that belong to others but which are held by the firm or gallery as a result of an auction sale." The commenter requested that the Commission add language from T.C.A. § 62-19-112(b)(4) such that proposed Rule 0160-01-.26 reads as follows: "All licensed auction firms and galleries shall maintain an escrow or trustee account for all funds that belong to others but which are held by the firm or gallery as a result of an auction sale, provided, however, that nothing in this section shall be construed to require an auto auction as defined in § 55-17-102(2)(A) to maintain or use an escrow account when the auction does not accept and deposit funds of others."

Agency Response to Comment 9: The agency stated that T.C.A. § 62-19-112(b)(4) is sufficiently clear to provide notice to the public and to auctioneer licensees that "an auto auction as defined in § 55-17-102(2)(A) to maintain or use an escrow account when the auction does not accept and deposit funds of others" is not required to maintain or use an escrow account. Therefore, the Commission declined to adopt the amendatory language to proposed Rule 0160-01-.26 as suggested by this commenter.

Comment 10

Rule 0160-01-.28 (Online Auctions)

There was a comment thanking the Commission for proposing and approving proposed Rule 0160-01-.28 regarding online auctions.

Agency Response to Comment 10: The agency thanked the commenter for her comments and asked if she required any further response to her comment. The commenter stated that she required no further response to her comment and simply wished to express her thanks to the Commission for their efforts to regulate online auctions.

Comment 11

Rule 0160-01-.28 (Online Auctions)

There was a comment asserting that proposed Rule 0160-01-.28 would require the commenter, who has been selling titled vehicles to the public online under his auctioneer license and his auctioneer firm license, to obtain a public motor vehicle auctioneer's license (which the commenter does not believe he needs under the current law and rules). The commenter stated that his business is more profitable when he doesn't have to have a fixed closing time for his online auto auctions. Accordingly, while the commenter said he would obtain any additional licenses to continue operating his business as necessary, he said he simply wished to bring his situation to the Commission's attention prior to approval of this proposed rule.

Agency Response to Comment 11: The agency stated that, although it appreciated the commenter's opinion, it believes that proposed Rule 0160-01-.28 accurately reflects the Commission's interpretation of the online auction

exemption as set forth in T.C.A. § 62-19-103(9). Accordingly, the agency voted to move forward with the language for proposed Rule 0160-01-.28 as set forth in Comment 7 (see above).

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. The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules:

There will be no known overlap, duplication, or conflict with other federal, state, or local governmental rules.

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

The rules are clear, concise, and unambiguous. Further, the rules are not open to different interpretations.

3. The establishment of flexible compliance and reporting requirements for small businesses:

These rules provide uniform and reasonable requirements, both for licensees of the Tennessee Auctioneer Commission, as well as those individuals who wish to be licensed with the Tennessee Auctioneer Commission. These rules assist with ensuring the welfare and safety of the citizens of Tennessee.

4. The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses:

These rules do not establish additional schedules or deadlines compliance or reporting requirements for licensees. These rules allow military personnel who are engaged in small business flexible reporting requirements with regard to their licenses.

5. The consolidation or simplification of compliance or reporting requirements for small businesses:

These rules, some of which amend current rules and some of which are new rules, are intended to provide clarification and do not complicate compliance or reporting requirements for small businesses.

6. The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule:

The performance standards in these rules aid in protecting the public's health, safety and welfare. These rules do not establish design or operational standards.

7. The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

These rules do not result in the unnecessary creation of entry barriers or other effects that will stifle entrepreneurial activity, curb innovation, or increase costs.

Impact on Local Governments

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

The proposed rule changes are not projected to have any 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;

Amendment to Rule 0160-01-.01 Duties of an Auctioneer: This amendment will number the existing paragraph within the rule as paragraph (1) and add a new paragraph (2) which will state that a licensed auctioneer shall not accept offers for hire to call bids at any auction held by an auction house, auction barn, or auction gallery that is not the holder of valid auction gallery license.

Amendment to Rule 0160-01-.05 Publication of Name: This amendment will change the reference to "sponsoring auctioneer" and "auctioneer" within the existing rule to instead reference the "principal auctioneer."

Amendment to Rule 0160-01-.11 Civil Penalties: This amendment will add a civil penalty range of 0-\$1,000 to violations of T.C.A. § 62-19-125(a) and (b) as well as any Commission rule or order. The amendment also adds a provision stating that each day of a continued violation may constitute a separate violation.

Amendment to Rule 0160-01-.14 Fees: This amendment will delete a paragraph which provided for a penalty fee of one hundred dollars (\$100.00) for any notification of change of information which is made to the Commission more than sixty (60) days after the effective date of the new information.

Amendment to Rule 0160-01-.16 Non-Auctioneer Firm License Application: This amendment will specify that any non-auctioneer owned firm must register one (1) licensed auctioneer who will serve as the firm's principal auctioneer and must attend and accept responsibility for all auctions. The amendment further states that the Commission must be notified within ten (10) days of the absence of the non-auctioneer owned firm's principal auctioneer, and a new principal auctioneer must be in place (and the Commission notified) on or before thirty (30) days have passed. The amendment specifies that no auctions shall be conducted by the non-auctioneer owned firm until a new principal auctioneer is placed.

Amendment to Rule 0160-01-.24 Notification of Change of Information: This amendment adds a new paragraph (2) which states that the Commission must be notified within ten (10) days of the absence of a firm's principal auctioneer, and a new principal auctioneer must be in place (and the Commission notified) on or before thirty (30) days have passed.

New Rule 0160-01-.26 Escrow Account Requirement: This proposed new rule states that all auction firms and galleries must have an escrow or trustee account for all funds which are held which belong to others as a result of an auction sale.

New Rule 0160-01-.27 Livestock Auction Sales: This proposed new rule states that the licensing exemption found within T.C.A. § 62-19-103 does not apply to any livestock auction which is not registered and regulated by the packers and stockyards administration. Further, this proposed new rule states that if a registered livestock auction facility also sells additional items at a regulated auction and the proceeds are deposited into a packers and stockyards account, then no firm or gallery license is necessary, but the person conducting the auction must hold an auctioneer's license. Finally, this proposed new rule states that if a regulated livestock auction conducts merchandise, equipment, or personal property auctions which are not held during a livestock auction, then the facility must have a firm or gallery license, and the person conducting said auction must have an auctioneer's license.

New Rule 0160-01-.28 Online Auctions: This proposed new rule states that if the time for a fixed time online only auction is extended beyond the stated ending time, then the auction and the person conducting the auction are no longer included in the licensing exemption found at T.C.A. § 62-19-103.

New Rule 0160-01-.29 Military Applicants: This proposed new rule provides for the expedited processing of applications for certain military personnel and their spouses, the recognition of education earned through military service, and the allowance of license renewal for six (6) months from the release from active duty without penalty when certain specified circumstances are met.

- (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;

T.C.A. § 4-3-1304 requires each program attached to the division of regulatory boards (which includes the Tennessee Auctioneer Commission) to promulgate rules and regulations to effectuate the purposes of this act. The primary purpose of T.C.A. § 4-3-1304 is for each program attached to the division of regulatory boards to promulgate rules establishing an expedited license application and/or renewal process for certain members of the military. The proposed amendment to Rule 0160-01-.29 is promulgated in response to T.C.A. § 4-3-1304.

- (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;

The proposed amendments to the Tennessee Auctioneer Commission rules will affect auctioneers and auction firms licensed by the Commission. Although there were several public comments received as part of this rulemaking hearing process, it does not appear that substantial opposition to these proposed rule changes exists among the individuals and businesses most directly affected by the proposed rule changes.

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

Although it does not appear to be directly on point, Attorney General Opinion 06-053 (issued March 27, 2006) does contain some language regarding potential interpretation of the Auctioneer statute regarding online auctions.

- (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;

The anticipated fiscal impact to state and local government revenues and expenditures of these proposed rule changes is anticipated to be minimal.

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

Sarah M. Mathews, Assistant General Counsel for the Tennessee Auctioneer Commission

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

Sarah M. Mathews, Assistant General Counsel for the Tennessee Auctioneer Commission

- (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, Nashville, TN 37243; Phone: (615) 532-6303; E-Mail: Sarah.Mathews@tn.gov

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

N/A