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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Motor Vehicle Commission
Division:	Department of Commerce and Insurance
Contact Person:	Anthony Glandorf
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Don Coleman
Address:	500 James Robertson Parkway, Nashville, Tennessee 37243
Phone:	(615) 741-0481
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Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Davy Crockett Tower		
Address 2:	500 James Robertson Parkway, Room 160		
City:	Nashville		
Zip:	37243		
Hearing Date :	01/10/11		
Hearing Time:	10:00	<input checked="" type="checkbox"/> x CST	<input type="checkbox"/> EST

Additional Hearing Information:

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
0960-01	General Rules
Rule Number	Rule Title
0960-01-.01	Definitions
0960-01-.03	Warranty Charges and Sales Incentive Audits
0960-01-.08	Used Car Dealer Applications

0960-01-.11	Inspection of Business Records
0960-01-.14	License Fees
0960-01-.17	Motor Vehicle Shows
0960-01-.21	Motor Vehicle Dealer Facilities

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

Chapter 0960-01
General Rules
Amendments

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

Rule 0960-01-.01 Definitions.

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

Authority: T.C.A. § 55-17-107.

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

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

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

Authority: T.C.A. § 55-17-107.

Rule 0960-01-.06 Notice of Termination, Cancellation or Non-Renewal is amended by deleting the text of the rule

in its entirety and by substituting instead the following language so that, as amended, the rule shall read as follows:

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

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

Authority: T.C.A. § 55-17-107.

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

Rule 0960-01-.08 Dealer Applications.

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

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

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

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

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

be maintained at the location of the dealership or at a dealership which owns the licensee. Temporary tag logs shall be kept at the dealership of each licensee to which it was issued. Records may be kept in written or electronic format.

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

Authority: T.C.A. § 55-17-107.

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

Rule 0960-01-.14 License Fees.

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

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

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

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

- (1) A motor vehicle show is any display, except as provided herein below, of motor vehicles by one or more manufacturers, distributors, or motor vehicle dealers.
- (2) A motor vehicle show permit must be obtained from the Motor Vehicle Commission by the sponsor or promoter thereof no later than ten (10) days prior to the commencement of the motor vehicle show. The

permit, or copy thereof, shall be prominently displayed at any entrance into the motor vehicle show.

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

Authority: T.C.A. §§ 55-17-107.

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

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

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

of three (3) parking spots dedicated for customer parking.

- (5) The facility shall be used exclusively for buying, selling, renting, displaying, advertising, demonstrating, servicing or repairing motor vehicles or selling functional or nonfunctional parts, including accessories, safety equipment and vehicle branded clothing.

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

Chapter 0960-05
Automotive Mobility Dealers
New Rules

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0960-05-.01 Sales Tax Identification Number.

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

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

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

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

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

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

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

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

0960-05-.04 Primary Business Activity.

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

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

0960-05-.05 Signs.

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

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

0960-05-.06 Automotive Mobility Dealer Facilities.

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

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

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

0960-05-.07 Reasonable Business Hours.

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

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

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

- (1) An applicant for an automotive mobility dealer license shall comply with the same requirements as a motor vehicle dealer in T.C.A. § 55-17-111 and shall provide the Commission with all information required by this section.
- (2) Applicants are required to provide the Commission, and keep current, the names of any inventory financiers, i.e. "floor planners" used by the dealership.

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

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

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

- (1) The Commission may deny an application for a license or revoke or suspend the license of an automotive mobility dealer who:
 - (a) Fails to comply with the application provisions and requirements of Rule 0960-05-.08;
 - (b) Violates any provision of T.C.A. § 55-17-114 (a) & (b); and
 - (c) Accepts on consignment at any given time more than two (2) new untitled motor vehicles of a specific line make by any franchised motor vehicle dealer.
- (2) The Commission shall, after a notice of hearing, revoke the license of an automotive mobility dealer if it determines that the dealer has sold or modified a vehicle that does not comply with the following:
 - (a) T.C.A. § 55-9-201 et seq. regarding the required equipment of vehicles operated in Tennessee;
 - (b) 49 C.F.R. 567 regarding the modification and alteration of motor vehicles;
 - (c) 49 C.F.R. 571 Federal Motor Vehicle Safety Standards; and

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

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

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: Nov 19, 2010

Signature: [Handwritten Signature]

Name of Officer: Anthony M. Claudert

Title of Officer: Asst. General Counsel



Subscribed and sworn to before me on: November 19, 2010

Notary Public Signature: [Handwritten Signature]

My commission expires on: 5/6/2012

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Filed with the Department of State on: 11/19/2010

[Handwritten Signature]

Tre Hargett
Secretary of State

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