

Notice
Of
Rulemaking Hearing

Tennessee Motor Vehicle Commission

There will be a hearing before the Tennessee Motor Vehicle Commission to consider the promulgation of rules and amendments to rules pursuant to Tenn. Code Ann. § 55-17-107. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204, and will take place in Room 160 of the Davy Crockett Tower, located at 500 James Robertson Parkway in Nashville, Tennessee at 9:30 a.m. (Central Time) on the 14th day of April, 2008.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Commerce and Insurance to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Department to determine how it may reasonably provide such aid or service. Initial contact may be made with Don Coleman, the Department's ADA Coordinator, at 500 James Robertson Parkway, 5th Floor, Nashville, Tennessee 37243 at (615) 741-0481.

For a copy of this Notice of Rulemaking Hearing, contact the Tennessee Motor Vehicle Commission, attention Don Trotter, Tennessee Motor Vehicle Commission, 500 James Robertson Parkway, 2nd Floor, Nashville, Tennessee 37243 at (615) 741-2711.

Substance of Proposed Rule

Chapter 0960-01
General Rules

Amendment

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

0960-1-.08 Dealer Applications.

- (1) (a) An applicant for a license to sell used motor vehicles shall comply with T.C.A. 55-17-111 and shall provide the Commission with all information required by this section.
- (b) Applicants are required to provide to the Commission, and keep current, the names of any inventory financiers, i.e. "floor planners" used by the dealership.
- (c) If an applicant has not supplied all the necessary materials within one hundred twenty (120) days from the date of 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-.10 Reasonable Business Hours is amended by deleting the rule in its entirety and substituting instead the following new language so that, as amended, the rule shall read:

0960-1-.10 Reasonable Business Hours.

- (1) All motor vehicle 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 hours of business 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. § 55-17-102, 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 substituting instead the following new language so that, as amended, the rule shall read:

0960-1-.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 representatives, all books, records and other memorandums of all transactions, transfers and/or sales of motor vehicles and dead files.
- (2) All records shall be kept on site or at a location where the records can be accessed in a reasonable amount of time. 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.

Paragraph (1) of Rule 0960-01-.13 Civil Penalties is amended by deleting the text of the paragraph in its entirety and substituting instead the following new language so that, as amended, the paragraph shall read:

0960-1-.13 Civil Penalties.

- (1) The Commission may, in a lawful proceeding respecting any individual or entity required to be licensed, registered or certified or who is otherwise subject to regulation by the Commission, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a statute, rule, or order pertaining to such individual/entity. The amount of any such civil penalty assessed shall be a minimum of one hundred dollars (\$100.00) and shall not exceed five thousand dollars (\$5000.00) for each day of violation or for each act of violation.
- (2) In determining the amount of a civil penalty the Commission may consider the following factors:
 - (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.
- (3) For purposes of the assessment of civil penalties pursuant to this rule, each separate act shall constitute a separate violation, and each day of continued violation shall constitute a separate violation.

Authority: T.C.A. §§ 55-17-107; 55-17-117 and 56-1-308.

Paragraphs (1) and (2) of Rule 0960-01-.15 Liability Insurance and Workers' Compensation are amended by deleting the text of the paragraphs in their entirety and substituting instead the following new language so that, as amended, the paragraphs shall read:

- (1) An applicant for a motor vehicle dealer license or an automobile auction license shall provide the Commission with a certificate or affidavit of liability insurance in a minimum amount of coverage of two hundred fifty thousand dollars (\$250,000) to be submitted along with each application for license, and
- (2) The minimum required coverage must remain and continue in force for as long as the dealer or automobile auction 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.

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

Paragraph (1) of Rule 0960-01-.16 Automobile Auction Minimum Requirements is amended by deleting the text of the paragraph in its entirety and substituting instead the following new language so that, as amended, the paragraph shall read:

- (1) Except as otherwise provided in this Chapter or state law, automobile auctions shall be licensed by the Motor Vehicle Commission and shall be wholesale transactions wherein the buyers are licensed motor vehicle dealers or their authorized agents. Unlicensed individuals are prohibited from buying automobiles or other motor vehicles at automobile auctions. Motor vehicle dealers may bring no more than five (5) employees with them to an automobile auction to assist them in the evaluating automobiles offered for auction and/or the transportation of those automobiles purchased. These employees are not permitted in the bid lanes.

Authority: T.C.A. §§ 55-17-102; 55-17-107; 55-17-109 and 55-17-111.

Rule 0960-01-.17 Motor Vehicle Show Minimum Requirements is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0960-1-.17 Motor Vehicle Shows.

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

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

- (3) A motor vehicle show permit shall be good for seven (7) day and may be renewed one (1) time.
- (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 a 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-.20 Sales of Used Vehicles by Unlicensed Individuals is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

Rule 0960-01-.20 Sales of Used Motor Vehicles by Unlicensed Individuals.

- (1) Unless otherwise provided by T.C.A. Title 55, Chapter 17 et seq., and these regulations, an individual may sell or offer to sell up to five (5) used motor vehicles registered and titled in his/her name, within a twelve (12) month period without a motor vehicle dealer's license.
- (2) Selling for or contracting with other unlicensed third parties for the sale of used vehicles titled in a third party's name is strictly prohibited.

- (3) If an individual sells or offers to sell more than five (5) vehicles within a twelve (12) month period, he/she shall be found in violation of this rule for engaging in the unlicensed sale of motor vehicles.
- (4) "Individual," as used in this section, includes, but is not limited to, any person or persons living together in a single household.

Authority: T.C.A. §§ 55-17-107; 55-17-109 and 55-17-110.

New Rules

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0960-1-.21 Motor Vehicle Dealer Facilities.

The following minimum requirements apply to all 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 and adequate storage space for the retention of records.
- (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 access to and exclusive dedicated use of motor vehicle storage or display lot capable of accommodating fifteen (15) motor vehicles. A lot shall consist of compacted gravel, chert, stone or similar materials and shall not include unimproved land or residential driveways.
- (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. §§55-17-102; 55-17-107, 55-17-111 and 55-17-114.

0960-1-.22 Surety Bonds and Letters of Credit.

- (1) The surety bond, certificate of deposit or irrevocable letter of credit required by T.C.A. Chapter 55, Title 17, Section 111(g) must remain and continue in force for as long as the licensee remains licensed and must name the Tennessee Motor Vehicle Commission as beneficiary. 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.
- (2) If an irrevocable letter of credit is submitted in lieu of a surety bond, the letter of credit must contain a clause automatically renewing the letter of credit each year.
- (3) Any surety or letter of credit is required to provide sixty (60) days notice of cancellation to the Commission.

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

0960-1-.23 Mail from Commission.

Except as otherwise provided, a licensed individual or entity or any individual or entity required to be licensed, or who is otherwise subject to regulation by the Commission, shall respond in writing to any communication from the Commission requesting a response within thirty (30) days of the mailing of such communication by registered or certified mail to the last address furnished to the Board by the licensee, unless otherwise granted an extension of time.

Authority: T.C.A. §§ 55-17-107 and 55-17-117.

0960-1-.24 Sales Tax Identification Number.

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

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

0960-1-.25 Business License.

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

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

0960-1-.26 Salesperson Licenses.

- (1) An individual, who has submitted a complete application and the required fees to the Motor Vehicle Commission for a motor vehicle salesperson's license, may work as a trainee under the supervision of a licensed salesperson while the license application is pending. An individual whose salesperson's license has been denied, suspended or revoked may not work as a trainee.
- (2) A licensed motor vehicle salesperson may sell motor vehicles at any motor vehicle dealership owned by the employer listed on their salesperson's license.
- (3) An individual may not hold a motor vehicle salesperson's license for more than one (1) motor vehicle dealer at any time.

Authority: T.C.A. §§ 55-17-107, 55-17-109, 55-17-110 and 55-17-113.

0960-1-.27 Lemon Law.

Sellers of new motor vehicles shall make available to customers information regarding T.C.A. 55-24-201 (Lemon Law). This may be done by directing customers to the Motor Vehicle Commission's website.

Authority: T.C.A. § 55-17-114.

Chapter 0960-2 Automotive Dismantlers and Recyclers

Amendment

Rule 0960-2-.01 Sales Tax Identification Number is amended by deleting the text of the rule in its entirety and substituting instead the following new language so that, as amended, the rule shall read:

0960-2-.01 Sales Tax Identification Number.

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

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

Rule 0960-2-.02 State and County Privilege License is amended by deleting the text of the rule in its entirety and substituting instead the following new language so that, as amended, the rule shall read:

0960-2-.02 State and County Privilege License.

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

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

Rule 0960-2-.03 Liability Insurance is amended by deleting the text of the rule in its entirety and substituting instead the following new language so that, as amended, the rule shall read:

0960-2-.03 Liability Insurance and Workers' Compensation.

- (1) All automotive dismantlers and recyclers shall provide the Commission with a certificate or affidavit of liability insurance in a minimum amount of coverage of two hundred fifty thousand dollars (\$250,000) to be submitted with each application for license.
- (2) The coverage must remain and continue in force for as long as the automotive dismantler or recycler 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) The insurance provider is required to provide sixty (60) days notice to the Commission of cancellation of the required minimum liability insurance coverage.

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

Rule 0960-2-.06 Business Records is amended by deleting the text of the rule in its entirety and substituting instead the following new language so that, as amended, the rule shall read:

0960-2-.06 Inspection of Business Records.

- (1) All automotive dismantlers and recyclers shall make available for inspection during normal business hours by the Commission or their duly authorized representatives, all books, records and other memorandums of all purchases and sales.
- (2) All records shall be kept on site or at a location where the records can be accessed in a reasonable amount of time. 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 0960-2-0.7 Zoning Restrictions is amended by deleting the text of the rule in its entirety and substituting instead the following new language so that, as amended, the rule shall read:

0960-2-0.7 Zoning, Highway Beautification and Storm Water Restrictions.

- (1) All applicants for an automotive dismantlers and recyclers license shall file with their application a statement from the proper local authority that the location or proposed location of their business complies with all applicable local zoning requirements.
- (2) All applicants for an automotive dismantlers and recyclers license shall file with their application a statement from the Tennessee Department of Transportation, Highway Beautification Division that the location is not in conflict with statutory requirements.

- (3) All applicants for an automotive dismantlers and recyclers license shall file with their application a copy of the applicant's current NPDES (Storm Water Discharge) Permit from the Tennessee Department of Environment and Conservation, Division of Water Pollution Control.

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

Rule 0960-2-.09 Business Premises is amended by deleting the text of the rule in its entirety and substituting instead the following new language so that, as amended, the rule shall read:

Rule 0960-2-.09 Business Premises.

The following minimum requirements apply to all automotive dismantlers and recycler 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 automotive dismantlers and recycler has a separate, outside entrance and exit. Any doors between the businesses shall be permanently sealed.
- (2) The facility shall contain adequate space for processing sales and purchases of motor vehicle parts. The facility shall also contain restroom accommodations and adequate storage space for the retention of records.
- (3) The facility shall have a primary telephone number listed in the local directory under the name of the automotive dismantlers and recycler. Mobile and/or cellular telephones are not acceptable as the primary business telephone. The primary phone number of the automotive dismantlers and recycler shall be posted either on the door to the automotive dismantlers and recycler, in a window of the automotive dismantlers and recycler or on the automotive dismantlers and recycler's sign.

Authority: T. C. A. §§55-17-102; 55-17-107, 55-17-111 and 55-17-114.

New Rules

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0960-2-.10 Reasonable Business Hours

0960-2-.10 Reasonable Business Hours.

All automotive dismantlers and recyclers 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 facility, in a window of the facility or on the facilities' 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 hours of business 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 55-17-111.

The notice of rulemaking hearing set out herein was properly filed in the Department of State on this the 31st day of January, 2008. (FS 01-19-08; DBID 814 through 815)