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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Regulatory Board Division
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only ONE Rule Number/RuleTitle per row)

Chapter Number	Chapter Title
0780-05-14	Scrap Metal Dealer Registration Program
Rule Number	Rule Title
0780-05-14-.01	Purpose
0780-05-14-.02	Definitions
0780-05-14-.03	Registration
0780-05-14-.04	Applications
0780-05-14-.05	Renewals
0780-05-14-.06	Fees
0780-05-14-.07	Check Issuance Fee
0780-05-14-.08	Vouchers
0780-05-14-.09	Revocation
0780-05-14-.10	Uniform Marking
0780-05-14-.11	Uniform Terminology

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

New Rules

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0780-05-14-.01 Purpose

The purpose of this chapter is to provide for administration and implementation of the scrap metal dealer registration program, *Tenn. Code Ann.*, Title 62, Chapter 9 (as amended by Public Acts of 2008, Chapter 690), herein referred to as the "Act".

Authority: T.C.A §62-9-102.

0780-05-14-.02 Definitions

- (1) As used in this chapter, unless the context otherwise requires, the definitions of terms contained in T.C.A. § 62-9-101 are applicable.
- (2) "Person" means, according to the context, any individual, association, partnership, corporation, or any other legally cognizable organization or entity or their employees and duly authorized agents who have the authority to buy, exchange or deal in scrap metal.

Authority: T.C.A §§62-9-102 and 1-3-105.

0780-05-14-.03 Registration

- (1) Any person who buys, exchanges, or deals in scrap metal either as an employer or employee must register with the Department of Commerce and Insurance as a scrap metal dealer.
- (2) All registrations issued under this part shall expire two (2) years from the date of issuance or renewal thereof.
- (3) Registration may be withdrawn by mailing the certificate of registration, along with any accompanying form required by the department, back to the Department.
- (4) A change in address for a registrant shall be reported to the Department within thirty (30) days.

Authority: T.C.A. §62-9-102.

0780-05-14-.04 Applications

- (1) All applications for registration as a scrap metal dealer shall be made on a form provided by the Department of Commerce and Insurance and accompanied by a non-refundable application fee.
- (2) All applications must include the name of the applicant, the social security number or tax payer identification of the applicant, the physical and mailing address of the scrap metal dealer, and the telephone number of the scrap metal dealer. All applications must be signed by the applicant and by the owner, partner or authorized corporate officer of the scrap metal dealer.
- (3) An applicant shall disclose, under penalty of perjury, any criminal conviction of a violation of this Act and any conviction of the criminal offense of theft, burglary or vandalism where the offense involves scrap metal and the date of any such conviction.
- (4) Failure to disclose a criminal conviction on the application for registration shall be a basis for the denial of the application.
- (5) Failure to submit a complete application for registration shall be a basis for the denial of the application.

Authority: T.C.A §62-9-102.

0780-05-14-.05 Renewals

- (1) Prior to the expiration of their registration, a registrant shall submit an application for renewal of registration on the prescribed form and accompanied by a non-refundable renewal fee.
- (2) All applications for renewal must include the name of the applicant, the social security number or tax payer identification of the applicant, the physical and mailing address of the scrap metal dealer, and the telephone number of the scrap metal dealer. All applications for renewal must be signed by the applicant and by the owner, partner or authorized corporate officer of the scrap metal dealer.
- (3) The application for renewal shall disclose, under penalty of perjury, any criminal conviction of a violation of this Act and any conviction of the criminal offense of theft, burglary or vandalism where the offense involves scrap metal and the date of any such conviction.
- (4) Failure to disclose a criminal conviction on the application for renewal shall be a basis for the denial of the renewal.
- (5) Failure to submit a complete application for renewal shall be a basis for the denial of the renewal.
- (6) Registrations cannot be renewed after they expire. If a registration is not renewed prior to expiration, a new application will be required to be submitted.

Authority: T.C.A §62-9-102.

0780-05-14-.06 Fees

- (1) All applications for registration under the Act shall be accompanied by a non-refundable fee of one hundred seventy five dollars (\$175).
- (2) All applications for renewal of registration under the Act shall be accompanied by a non-refundable fee of one hundred twenty five dollars (\$125).
- (3) A request for a replacement certificate shall be accompanied by a non-refundable fee of ten dollars (\$10).

- (4) A request to change the address on a certificate shall be accompanied by a non-refundable fee of ten dollars (\$10).

Authority: T.C.A §62-9-102.

0780-05-14-.07 Check Issuance Fee

A scrap metal dealer may charge the person selling scrap metal a check issuance fee of ten percent (10%) of the dollar value of the scrap for the dealer's administrative costs of processing and issuing any check required by the Act. However, the fee, if charged, shall be a minimum of two dollars (\$2.00) and shall not exceed five dollars (\$5.00) per check.

Authority: T.C.A. §62-9-104.

0780-05-14-.08 Vouchers

- (1) A voucher issued as payment for scrap metal as required by the Act shall expire six (6) months from the date of the transaction.
- (2) Any unredeemed voucher funds shall be remitted to the Department of Commerce and Insurance, with a form provided by the Department, within one (1) year of the expiration of the voucher.

Authority: T.C.A. § 62-9-104.

0780-05-14-.09 Revocation

- (1) The registration of a person convicted of a violation of any provision of the Act, or the criminal offense of theft, burglary or vandalism if such offense involved scrap metal, shall be immediately revoked by operation of law upon such conviction.
- (2) The law enforcement agency responsible for the conviction shall transmit to the Commissioner of Commerce and Insurance a copy of the judgment of conviction of a person registered as a scrap metal dealer.

Authority: T.C.A §62-9-110.

0780-05-14-.10 Uniform Marking

In order to be considered marked under Tenn. Code Ann. § 62-9-102(a)(9), the scrap metal must be clearly and visibly embossed, engraved, etched, painted or otherwise marked with the name of the governmental entity, business, company, or the name of the owner of such metal.

Authority: T.C.A. §§62-9-102 and 62-9-106.

0780-05-14-.11 Uniform Terminology

The following terms are the uniform terminology describing the types of metal and objects most commonly sold as scrap to be used in the transaction records:

Acetylene Cutting Torch	Insulated Aluminum Wire
Air Conditioner	Insulated Copper Wire
Air Conditioner Coil	Insulated Steel Wire
Air Conditioner Condenser	Kitchen Exhaust Hood
Aluminum Ladder	Lawn Mower

Aluminum Panels	Microwave Oven
Angle Iron	Miscellaneous Aluminum Scrap
Backflow Preventer	Miscellaneous Copper Scrap
Bare Aluminum Wire	Miscellaneous Iron Scrap
Bare Copper Wire	Miscellaneous Steel Scrap
Bare Steel Wire	Motor Vehicle
Batteries	Motor Vehicle parts
Bolt Cutters	Motor Vehicle – Crushed
Cable – Aluminum	Muffler/Muffler Pipe
Cable – Copper	Pipe – Iron
Cable – Steel	Pipe – Stainless Steel
Catalytic Converter	Precious Metal
Chains	Radiator
Compressed Gas Cylinder/Tank	Refrigerator/Freezer
Copper Tubing	Rolled Metal Coil
Dishwasher	Scaffolding
Dryer	Stove/Oven
Electrical Box	Toolbox – Truck
Farm/Garden Equipment/Implements	Toolbox – Jobsite
Fence	Washing Machine
Firearms	Welder
Fuel tank	Wrought Iron
Heater Core/Furnace	

Authority: T.C.A §§69-9-102 and 62-9-104

* 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)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of Commerce and Insurance (board/commission/ other authority) on 12-2-2008 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/29/2008

Notice published in the Tennessee Administrative Register on: 09/15/2008

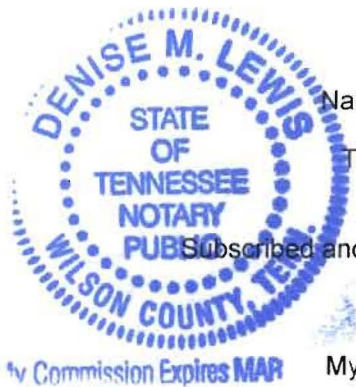
Rulemaking Hearing(s) Conducted on: (add more dates). 10/21/2008

Date: 12-2-08

Signature: Leslie A. Newman

Name of Officer: Leslie A. Newman

Title of Officer: Commissioner - Commerce and Insurance



Subscribed and sworn to before me on: 12-2-08

Notary Public Signature: Denise M. Lewis

My commission expires on: 3/5/12

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter
2-6-09
Date

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Filed with the Department of State on: 2/10/09

Effective on: 4/06/09

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 shall 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.

Bellsouth Telecommunications, Inc. d/b/a AT&T Tennessee recommended the proposed rule requiring a scrap metal dealer to report a change of address to the Department of Commerce and Insurance within thirty (30) days be revised to require the dealer to report a change in address within five (5) days of the effective date of the change. Guy Hicks, General Counsel of AT&T Tennessee reiterated this comment at the hearing.

Dominick Marchitto, President of the Tennessee Scrap Recycling Association requested that the proposed rules be modified to only require senior management and the owners of a scrap metal company be registered. Mr. Marchitto also commented during the hearing that the requirement of reporting a change of address created a hardship on companies that registered a number of employees.

Ronald A. Belz, President and C.O.O. of Belz Enterprises suggested the words "clearly and" be deleted from the proposed rule regarding uniform marking. Mr. Belz also suggested the rule did not establish a "system" as contemplated by the act.

An additional written comment was received after the hearing from Dominick Marchitto that to remove the words suggested by Mr. Belz would contravene the intention of the act as to marking.

The Commissioner, after due consideration, was of the opinion the rule as to reporting a change of address was sufficient as originally drafted and declined to change the same. As to requiring only senior management and the company to register, the Commissioner responded that the rule, as drafted, mirrors the language of the act. The Commissioner in response to the comment concerning uniform marking noted that the committee appointed by her to help establish such a "system" discussed the matter quite extensively and determined that no other state had such a program. The Commissioner accepted the Committee's recommendation as to this rule and did not contemplate any changes to the same.

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

Economic Impact Statement:

1. Types of small businesses directly affected:

All businesses that buy, exchange, or deal in scrap metal will be affected.

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

All small businesses that buy, exchange, or deal in scrap metal and the authorized agents who buy, exchange, or deal in scrap metal on behalf of the business are required to register with the Department. The registration fees required to be paid when registering with the Department will be a new fee that small businesses will have to pay.

3. Probable effect on small businesses:

The Department is required to charge registration and renewal fees adequate to cover the administrative costs of the registration program. All small businesses that buy, exchange, or deal in scrap metal and the authorized agents who buy, exchange, or deal in scrap metal on behalf of the business are required to register with the Department. The registration fees required to be paid when registering with the Department will be a new fee that small businesses will have to pay.

4. Less burdensome, intrusive, or costly alternative methods:

There are no alternative means available to accomplish the objectives dictated by the General Assembly in creating this registration program.

5. Comparison with federal and state counterparts:

There are no federal counterparts to the issues addressed by these rules.

6. Effect of possible exemption of small businesses:

In order to ensure the health, safety and welfare of the citizens of Tennessee and to accomplish the objectives dictated by the General Assembly in creating this registration program, it is imperative that small businesses are held to the same standards as larger businesses regarding registration.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

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

Rule 0780-5-14-.01 Purpose - Declares that the chapter provides for the administration and implementation of the scrap metal dealer registration program.

Rule 0780-5-14-.02 Definitions - Defines terms relevant to the chapter.

Rule 0780-5-14-.03 Registration – This rule sets forth who is required to be registered and the term of the registration. The rule also requires a registrant to notify the Department of a change in address within 30 days.

Rule 0780-5-14-.04 Applications – This rule sets forth the requirements for completion of the scrap metal dealer registration application.

Rule 0780-5-14-.05 Renewals – This rule sets forth the requirements for completion of the renewal application for a scrap metal dealer.

Rule 0780-5-14-.06 Fees – This rule specifies fees for the original issuance of a scrap metal dealer registration, the renewal thereof, for a replacement certificate and for a change of address.

Rule 0780-5-14-.07 Check issuance fee – This rule specifies the fee a scrap metal dealer may charge for issuing a check for the dealer’s administrative costs of processing the same.

0780-5-14-.08 Vouchers – This rule reiterates the statutory provision concerning expiration of vouchers issued as payment for scrap metal and the remittance of unredeemed voucher funds to the Department of Commerce and Insurance.

0780-5-14-.09 Revocation – This rule reiterates the statutory provision providing for revocation of the registration of a person for conviction of a violation of any provisions of the Act or the offenses of theft, burglary or vandalism if such offenses involved scrap metal.

- (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;

The Rules are promulgated pursuant to Tenn. Code Ann. §§62-9-102, 104 and 110.

- (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;

These Rules will affect individuals and entities that buy, exchange, or deal in scrap metal.

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

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

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

These rules will have no fiscal impact on the Department as the fees for the registration program are to cover the administrative costs associated with the program.

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

Steve Majchrzak, Assistant Commissioner for Regulatory Boards, and J. Wayne Pugh have substantial knowledge and understanding of these rules.

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

Steve Majchrzak and J. Wayne Pugh will explain the rules at any scheduled meeting of the Government Operations Committee.

- (H) Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

J. Wayne Pugh at Department of Commerce and Insurance, Office of Legal Counsel, 500 James Robertson Parkway, Davy Crockett Tower, Nashville, Tennessee 37243, (615) 253-2371.

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