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Sequence Number: 08-16-14
 Rule ID(s): 5712
 File Date: 5/22/14
 Effective Date: 8/20/14

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Tennessee Alcoholic Beverage Commission
Division:	
Contact Person:	E. Keith Bell
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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 to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0100-01	Rules for the Sale of Liquor by the Drink
Rule Number	Rule Title
0100-01-.03 (15)	Happy Hour Restrictions
0100-01-.03 (19)	Seating
0100-01-.03 (22)	Application Process for On-Premises Consumption Licenses

Substance of Rule Amendments

Rule 100-01-.03(15) Happy Hour Restrictions, is amended by deleting subparagraph (b) in its entirety and by redesignating all subsequent subparagraphs accordingly.

Statutory Authority: T.C.A. §§ 57-4-201(a)(2) and 57-3-406(b).

Rule 100-01-.03(19) Seating, is amended by deleting the language "or hotel" in the first sentence of the subparagraph and by substituting instead the language "shall maintain a minimum seating for forty people at tables and all on-premise consumption licensees licensed as a hotel".

Statutory Authority: §§ 57-4-201(a)(2) and 57-4-102(29); 2008 Public Chapter 649.

Rule 100-01-.03(22) Application Process for On-premise Consumption Licenses, is amended by deleting part (a)(9) in its entirety and by substituting instead the following language:

(a)

9. Proof that applicant entity, if a corporation, LLC, LP, etc., is registered with the Tennessee Secretary of State's office, and the submission by said applicant entity of a Certificate of Existence/Good Standing issued by the Tennessee Secretary of State's Office within thirty (30) days of applicant's application for a new license or renewal of an existing license. If applicant entity was formed in another state or foreign jurisdiction, applicant must submit a Certificate of Authorization issued by the Tennessee Secretary of State's Office within thirty (30) days of applicant's application for a new license or renewal of an existing license.

Statutory Authority: §§ 57-4-104(c) and 57-4-201(a)(2).

Rule 100-01-.03(22) Application Process for On-premise Consumption Licenses, is further amended by adding the following language as a new part (a)(15) and by redesignating all subsequent parts accordingly:

(a)

15. Completed declaration of citizenship form to be submitted by owner(s), officer(s), and/or principal(s) of the applicant or others as required by P.C. 1061 (2012).

Statutory Authority: §§ 57-4-104(c), 57-4-201(a)(2), and 4-58-103.

* 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)
Mary McDaniel	✓				<i>Mary McDaniel</i>
John Jones	✓				<i>John A Jones</i>
Bryan Kaegi	✓				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Alcoholic Beverage Commission on 03/25/2014, 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: 1/04/20013

Rulemaking Hearing(s) Conducted on: (add more dates). 02/27/2013

Date: *S. Keith Bell* 3/25/14

Signature: _____

Name of Officer: Keith Bell

Title of Officer: Director of Alcoholic Beverage Commission



My Commission Expires JULY 6, 2015

Subscribed and sworn to before me on: 3/25/14

Notary Public Signature: *Joyce B. Cathey*

My commission expires on: 7/6/15

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.

RE Cooper Jr
Robert E. Cooper, Jr.
Attorney General and Reporter

5-6-14
Date

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2014 MAY 22 PM 5:57
SECRETARY OF STATE

Filed with the Department of State on: 5/22/14

Effective on: 8/20/14

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.

There were no public comments on these rules.

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.

Exemptions from requirements of T.C.A. § 4-5-401, et seq.: T.C.A. § 4-5-404 states that §4-5-401, et seq. "shall not apply to rules that are adopted on an emergency basis under part 2 of this chapter, that are federally mandated, or that substantially codify existing state or federal law."

Rule 100-01-.03(15) is amended by these proposed rules solely to comply with 2012 Public Chapter 947 and T.C.A. § 57-3-406(b). In 2012, Public Chapter 947 revised T.C.A. § 57-3-406(b) to remove the prohibition against the offering of discounts on alcohol served by establishments licensed to sell alcohol for consumption on the premises, and Rule 0100-01-.03(15) is revised to comply with such Public Chapter. Therefore, the rule is exempt from the requirements of T.C.A. § 4-5-401, et seq. as a substantial codification of existing state law.

Rule 100-01-.03(19) is amended by these proposed rules solely to comply with 2008, Public Chapter 649 and TCA § 57-4-102(29), which lowered the minimum seating requirement for restaurants from at least 75 people seating at tables to at least 40 people seating at tables. Therefore, the rule is exempt from the requirements of T.C.A. § 4-5-401, et seq. as a substantial codification of existing state law.

Rule 100-01-.03(22)(a)(15) is amended by these proposed rules solely to comply with the state Eligibility Verification for Entitlements Act (codified in TCA § 4-58-101, et seq.) which requires that each state governmental entity require that any applicant for a state benefit, including commercial licenses, declare the person's citizenship. Rule 0100-01-.03(22)(a)(15) is added to require applicants to submit a declaration of citizenship form as part of an application for a license, pursuant to the requirements of the state Eligibility Verification for Entitlements Act. Therefore, the rule is exempt from the requirements of T.C.A. § 4-5-401, et seq. as a substantial codification of existing state law.

Economic Impact Statement for amendment to Rule 100-01-.03(22)(a)(9)

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

Any small business licensed by the commission for the sale of alcoholic beverages for on-premise consumption would be directly affected by the proposed rule. There are approximately 3,100 establishments license to sell alcoholic beverages for on-premise consumption and a significant portion of those would be small businesses.

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

The reporting, recordkeeping and administrative costs of small businesses complying with the proposed rule is projected to be insignificant.

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

Consumers will be reassured that entity applicants for licenses to sell alcohol for consumption on the premises comply with all state law requirements and are authorized to operate as a business in the state as evidenced by a certificate of existence/good standing or a certificate of authorization. The probable effect on impacted small businesses is minimal.

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

The application requirements of the proposed rule are necessary to ensure that applicants comply with all state law requirements and are authorized to operate as a business in the state, and there are no less burdensome, intrusive, or costly alternative methods to ensure that such requirements are met.

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

These proposed rules are comparable to, and not significantly more or less burdensome than, other licensure requirements of the commission or of other state agencies.

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

An exemption of small businesses would create a disparate and unfair impact on the persons and entities licensed by the commission.

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 rules are not anticipated to have an 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;

These rules are being adopted to update our conduct of business regulations for establishments selling alcohol for consumption on the premises to remove the prohibition in previous rules against offering promotions or sales on alcohol between 10:00pm and closing in compliance of T.C.A. § 57-3-406(b) as amended by 2012 Public Chapter 947; to decrease the minimum seating requirement for licensed restaurants from a minimum of 75 people at tables to a minimum of 40 people at tables pursuant to 2008 Public Chapter 649; to require that an entity applicant submit a certificate of existence/good standing issued by the Tennessee Secretary of State's Office; and to require that a declaration of citizenship form be completed for each application pursuant to T.C.A. § 4-58-103.

- (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;

In 2012, Public Chapter 947 revised T.C.A. § 57-3-406(b) to remove the prohibition against the offering of discounts on alcohol served by establishments licensed to sell alcohol for consumption on the premises, and Rule 0100-01-.03(15) is revised to comply with such Public Chapter. In 2008, Public Chapter 649 revised TCA § 57-4-102(29) to lower the minimum seating requirement for restaurants from at least 75 to at least 40. Rule 0100-01-.03(19) is revised to comply with such Public Chapter. The state Eligibility Verification for Entitlements Act (codified in TCA § 4-58-101, et seq.) requires that each state governmental entity require that any applicant for a state benefit, including commercial licenses, declare the person's citizenship. Rule 0100-01-.03(22)(a)(15) is added to require applicants to submit a declaration of citizenship form as part of an application for a license, pursuant to the requirements of the state Eligibility Verification for Entitlements Act.

- (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;

All persons or entities who may apply for, may receive or have received a license from the commission for the sale of alcoholic beverages for on-premise consumption. The commission has not received any input, either for or against the proposed rules, from any affected person or entity.

- (D) Identification of any opinions of the Attorney General and Reporter or any judicial ruling that directly relates to the rule;

None.

- (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 fiscal impact would be minimal.

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

E. Keith Bell, Director of The Alcoholic Beverage Commission and Joshua Stepp, Staff Attorney for The Alcoholic Beverage Commission.

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

E. Keith Bell, Director of The Alcoholic Beverage Commission and Joshua Stepp, Staff Attorney for The
SS-7039 (October 2011)

Alcoholic Beverage 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

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

No such request received to date.

'REDLINE' DEPICTION OF RULES AS AMENDED, PER TCA 4-5-226(i)

0100-01-.03 CONDUCT OF BUSINESS.

(15) Happy Hour Restrictions. No licensee or employee or agent of a licensee shall engage in any of the following promotional practices during the period beginning with 10:00 p.m., prevailing time, until the time set by law for closing of such licensed establishments:

(a) Serve two or more drinks or containers of alcoholic beverages to a consumer at one time.

~~(b) Sell, offer to sell, or deliver to any person or group of persons any drinks that are priced less than the price regularly charged for that drink in that size during the same calendar week, except at private functions not open to the public; or~~

~~(c)~~(b) Increase the volume of alcohol contained in any such drink during any calendar week without increasing proportionately the price regularly charged for such drink.

(19) Seating. All on-premise consumption licensees licensed as a restaurant ~~or hotel~~ shall maintain a minimum seating for forty people at tables and all on-premise consumption licensees licensed as a hotel shall maintain a minimum seating for seventy-five people at tables during business hours with the exception of wine-only restaurants as defined at T.C.A. § 57-4-101(c), gourmet restaurants as defined at T.C.A. § 57-4-102(27)(e), or any other statutory exception. Seasonal seating (i.e. outside patio seating) shall count toward total numbers, but not toward the minimum seating requirements at tables. Seats at bars will be counted toward the minimum number of seats at tables if the bar is at least 20 inches in depth and meals may be served and are regularly served at the bar. Those bars containing less than 20 inches in depth will be looked at on a case by case basis with such factors as the type of menu served, placement of the bar, and whether food is regularly served at that bar.

(22) Application Process for On-premise Consumption Licenses.

(a)

9. Proof that Applicant Entity, if a corporation, LLC, LP, etc, is registered with the Tennessee Secretary of State's office; and the submission by said applicant entity of a Certificate of Existence/Good Standing issued by the Tennessee Secretary of State's Office within thirty (30) days of applicant's application for a new license or renewal of an existing license. If applicant entity was formed in another state or foreign jurisdiction, applicant must submit a Certificate of Authorization issued by the Tennessee Secretary of State's Office within thirty (30) days of applicant's application for a new license or renewal of an existing license.

15. Completed declaration of citizenship form to be submitted by owner(s), officer(s), and/or principal(s) of the applicant or others as required by P.C. 1061 (2012).