

**Department of State
Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-11-18
Rule ID(s): 6679
File Date: 1-11-18
Effective Date: 4-11-18

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 Alcoholic Beverage Commission
Division:
Contact Person: Clayton Byrd, Executive Director
Address: 500 James Robertson Parkway, 3rd Floor, Nashville, TN
Zip: 37243
Phone: 615-741-7620
Email: Clay.Byrd@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. 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	Conduct of Business
0100-01-.08	Terminal Building of a Commercial Air Carrier

Chapter Number	Chapter Title
Rule Number	Rule Title

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to

http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Rule 0100-01-.03 Conduct of Business, paragraph (2) is amended by deleting the present language in its entirety and replacing it with the following:

- (2) Consumption on Licensed Premises. Except as provided for in 0100-01-.08 below, no licensee shall permit alcoholic or malt beverages to be consumed and/or sold on the licensed premises between the hours of 3 a.m. and 8 a.m. on Monday through Saturday or between the hours of 3 a.m. and 10 a.m. on Sunday unless the local jurisdiction has opted out of the expanded hours. If such is the case, then the consumption and/or sale of alcoholic beverages may begin at 12 noon on Sunday.

Authority: T.C.A. §§ 4-58-103, 57-1-207, 57-3-104, 57-3-406, 57-3-704, 57-3-710, 57-4-101, 57-4-102, 57-4-201 and 57-4-203.

Rule 0100-01 Rules for the Sale of Liquor by the Drink is amended by adding the following as a new separate section:

Chapter 0100-01-.08 Terminal Building of a Commercial Air Carrier

- (1) Hours of Sale. Notwithstanding subsection 0100-01-.03(2), any establishment that holds a license as a terminal building of a commercial air carrier airport under Tenn. Code Ann. §57-4-102(36), any establishment that holds a license as a commercial airline travel club under Tenn. Code Ann. § 57-4-102(10), or a concessionaire that holds a liquor-by-the-drink license and is located in a terminal building of a commercial air carrier airport, shall be permitted to allow alcoholic or malt beverages to be consumed and/or sold on the licensed premises during the hours that the terminal building of the commercial carrier airport is open to the public, unless the local jurisdiction has opted out of these expanded hours.
- (2) Privilege Tax. Establishment, as the term is used in Tenn. Code Ann. § 57-4-301(b)(1)(L), shall mean the license holder. Only one license fee or privilege tax shall be due from each holder of a license for a terminal building of a commercial air carrier airport, regardless of the number of points of sale the entity may operate under the license.
- (3) Establishment.
 - (a) A terminal building of a commercial air carrier airport license may be issued either to the entity having contractual, jurisdictional or other such authority to operate the airport, or, in the entity's discretion, to another entity or entities as are contractually authorized to operate within the airport. All such entities shall be considered an establishment for purposes of Tenn. Code Ann. § 57-4-301(b)(1)(L) and shall file an addendum with each renewal application identifying each point of sale within the airport.
 - (b) The holder of a license for a terminal building of a commercial air carrier airport may contractually authorize a separate entity to operate under the terminal building of a commercial air carrier airport license, and such contractually authorized entity shall not be required to obtain its own license; provided that prior notice and disclosures shall be given to the commission, on such forms or in such manner as may be prescribed by the commission. The license holder shall ultimately be responsible for any violation or sanction issued by the commission.
- (4) Enforcement. The commission may, in its discretion, treat each point of sale at the terminal building of a commercial air carrier separately for enforcement purposes.

Authority: T.C.A. §§ 57-3-204(i), 57-4-101, 57-4-102, 57-4-201, 57-4-203, and 57-4-301.

* 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)
Bryan Kaegi	X				<i>Bryan Kaegi</i>
Richard Skiles	X				<i>Richard Skiles</i>
John A. Jones	X				<i>John A. Jones</i>

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the TABC (board/commission/ other authority) on 11/28/2017 (mm/dd/yyyy), 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: 09/15/2017

Rulemaking Hearing(s) Conducted on: (add more dates). 11/13/2017

Date: 11-28-17

Signature: *Clay Byrd*

Name of Officer: Clay Byrd

Title of Officer: Director



Subscribed and sworn to before me on: November 28, 2017

Notary Public Signature: *Brandy Crissman*

My commission expires on: 7-6-2020

Agency/Board/Commission: _____

Rule Chapter Number(s): _____

All emergency 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
1/5/2018
 Date

Department of State Use Only

Filed with the Department of State on: 1-11-18

Effective on: 4-11-18

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED
2018 JAN 11 PH 1:49
SECRETARY OF STATE
PUBLICATIONS

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

A copy of a document summarizing Commission responses to public hearing comments is attached.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The proposed rule was brought by representatives of certain airports and retail businesses within such airports in order to expand the hours of sale of alcoholic beverages and beer at such airports and to provide additional flexibility and potentially cheaper fees with regards to obtaining licenses to sell alcoholic beverages by retail businesses at such airports. Since this rule only affects certain airports and certain retail businesses in such airports, it is expected to have very limited impact on small businesses, but to the extent small business would be affected by this rule, that effect would be positive and to the benefit of the small business. Roughly 20 businesses may be impacted by this rule, but such businesses are not necessarily small businesses and very few small businesses are expected to be impacted by this rule. This rule was brought by certain airports and businesses and there are no less burdensome, intrusive, or costly method for effectuating the purposes of the rule and this rule would generally decrease the fees charged and remove certain administrative requirements. There are no state or federal counterparts for which this rule can be effectively compared to, except that with regard to hours of sale, that authority for the Commission to expand the hours of sale is given by T.C.A. § 57-4-203 and has been used previously pursuant to Rule 0100-01-.03(2). To the extent small businesses would be affected by this rule, the exemption of small businesses from this rule would be detrimental to such small businesses.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rule would extend the hours of sale of both alcoholic beverages and beer in certain airports, provided that pursuant to T.C.A. § 57-4-203, the local jurisdictions in which the airports effected by this rule are located do have the right to pass an ordinance to opt out of this extension of the hours of sales of alcoholic beverages and beer at such airports.

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;

The proposed rule was brought by representatives of certain airports and retail businesses within such airports in order to expand the hours of sale of alcoholic beverages and beer at such airport and, to provide additional flexibility and potentially cheaper fees with regards to obtaining licenses to sell alcoholic beverages by retail businesses at such airports.

- (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;

There is no state or federal law that mandates the promulgation of this rule, however, T.C.A. § 57-4-203 allows the Commission, upon petition for rulemaking by a licensee and the holding of a rulemaking hearing, to promulgate a rule expanding the hours of sale of alcoholic beverages and beer.

- (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 Nashville Airport and representatives of certain retail establishments within the airport petitioned for this rule and urge adoption for this rule. The Commission has heard from no one opposing the rule.

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

There are no such attorney general opinions or judicial rulings.

- (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 is minimal due to the very limited scope and effect of this rule to only certain airports.

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

Clay Byrd, Director; Zack Blair, Assistant Director

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

Clay Byrd, Director

- (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 Pkwy, 3rd Floor, Nashville, TN 37243; 615-741-7620; Clay.Byrd@tn.gov

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

No additional information regarding this proposed rule has been requested.



MEMO

From: Clayton Byrd, Executive Director

Re: Responses to comments made at public rulemaking hearing

Date: November 20, 2017

On or about February 15, 2017, a petition to promulgate certain rules regarding terminal buildings of commercial air carriers including rules to expand the hours of sale of alcoholic beverages and beer in such airport terminals were filed pursuant to T.C.A. § 57-4-203 and other relevant law. On November 13, a rulemaking hearing was held in accordance with the law. At the hearing, various comments were made in support of the proposed rule. Only one comment was made that prompts comment by the Tennessee Alcoholic Beverage Commission (TABC). Below is a summary of the comment and the Tennessee Alcoholic Beverage Commission's (TABC's) response to such comment:

- (1) AIRPORT PACKAGE STORES AND FINANCIAL DISCLOSURES - Rule 0100-01-.08(5) - A comment was made requesting that the TABC add an additional provision as a part of these rules regarding airport terminal buildings to specify that certain package stores located in such airports are not required to maintain a minimum of 65% of sales from alcoholic beverages. It was persuasively argued that this requirement could not be possibly met by such licensee and could not have been met at the time that this license type was authorized by law and thus any interpretation that the requirement applied to such licensee would be contrary to the statutory intent that authorized the provision of a retail package store license to such licensee. The TABC agrees with this argument. Chapter 301 of the Public Acts of 2016 was passed with the specific intent to allow a retail package store license to be obtained in certain airports. This law was passed after the 65% minimum sales provision was added to the law in 2014. It is the opinion of the TABC that since the retail package store at the airport, by the very nature of it being at the airport, could not have met the 65% minimum sales provision, at the time of the passage of Chapter 301 of the Public Acts of 2016, then it was the statutory intent that the 65% minimum sales provision not apply to package stores licensed pursuant to Chapter 301 of the Public Acts of 2016. However, since the statutory intent is clear, and because this request is outside of the scope of the filed rule petition, the TABC does not feel it is appropriate or necessary to include a rule provision specifying this at this time.

Sincerely,

A handwritten signature in black ink, appearing to read "Clayton Byrd", written over a horizontal line.

Clayton Byrd
Executive Director
Tennessee Alcoholic Beverage Commission



Rule 0100-01-.03 Conduct of Business, paragraph (2) is amended by deleting the present language in its entirety and replacing it with the following:

- (2) Consumption on Licensed Premises. Except as provided for in 0100-01-.08 below, No licensee shall permit alcoholic or malt beverages to be consumed and/or sold on the licensed premises between the hours of 3 a.m. and 8 a.m. on Monday through Saturday or between the hours of 3 a.m. and 10 a.m. on Sunday unless the local jurisdiction has opted out of the expanded hours. If such is the case, then the consumption and/or sale of alcoholic beverages may begin at 12 noon on Sunday.

Authority: T.C.A. §§ 4-58-103, 57-1-207, 57-3-104, 57-3-406, 57-3-704, 57-3-710, 57-4-101, 57-4-102, 57-4-201 and 57-4-203.

Rule 0100-01 Rules for the Sale of Liquor by the Drink is amended by adding the following as a new separate section:

Chapter 0100-01-.08 Terminal Building of a Commercial Air Carrier

- (1) Hours of Sale. Notwithstanding subsection 0100-01-.03(2), any establishment that holds a license as a terminal building of a commercial air carrier airport under Tenn. Code Ann. §57-4-102(36), any establishment that holds a license as a commercial airline travel club under Tenn. Code Ann. § 57-4-102(10), or a concessionaire that holds a liquor-by-the-drink license and is located in a terminal building of a commercial air carrier airport, shall be permitted to allow alcoholic or malt beverages to be consumed and/or sold on the licensed premises during the hours that the terminal building of the commercial carrier airport is open to the public, unless the local jurisdiction has opted out of these expanded hours.
- (2) Privilege Tax. Establishment, as the term is used in Tenn. Code Ann. § 57-4-301(b)(1)(L), shall mean the license holder. Only one license fee or privilege tax shall be due from each holder of a license for a terminal building of a commercial air carrier airport, regardless of the number of points of sale the entity may operate under the license.
- (3) Establishment.
- (a) A terminal building of a commercial air carrier airport license may be issued either to the entity having contractual, jurisdictional or other such authority to operate the airport, or, in the entity's discretion, to another entity or entities as are contractually authorized to operate within the airport. All such entities shall be considered an establishment for purposes of Tenn. Code Ann. § 57-4-301(b)(1)(L) and shall file an addendum with each renewal application identifying each point of sale within the airport.
- (b) The holder of a license for a terminal building of a commercial air carrier airport may contractually authorize a separate entity to operate under the terminal building of a commercial air carrier airport license, and such contractually authorized entity shall not be required to obtain its own license; provided that prior notice and disclosures shall be given to the commission, on such forms or in such manner as may be prescribed by the commission. The license holder shall ultimately be responsible for any violation or sanction issued by the commission.
- (4) Enforcement. The commission may, in its discretion, treat each point of sale at the terminal building of a commercial air carrier separately for enforcement purposes.

Authority: T.C.A. §§ 57-3-204(i), 57-4-101, 57-4-102, 57-4-201, 57-4-203, and 57-4-301.