

DRAFT REVISIONS TO EXISTING RULES

(Stricken language is marked through, new language is underlined)

538-X-3-.18 Denial of Application; Request for Hearing from Application Denial.

(a) In accordance with §20-2A-56(e), Code of Ala. 1975, (as amended), any Applicant who has been denied a license by the Commission may seek an investigative hearing before the Commission to seek reconsideration of said denial. Request for hearing must be filed electronically on or before 4 p.m., CDT, 14 days from the date of the denial. ~~The party seeking the investigative hearing shall serve a copy of such request to all other applicants for such license offering and shall certify the same to the Commission. Such service may be accomplished by email, USPS First-Class Mail to the authorized contact person as identified on such applicants' application. At the time of the hearing request, the disappointed Applicant shall submit funds equal to the amount of the license fee for which it otherwise would have been responsible. The funds paid by the disappointed Applicant are nonrefundable; if the Applicant is successful in challenging the award, the Applicant's payment shall be used to pay the Applicant's license fee, but if the applicant is unsuccessful, the funds shall be used to defray the costs, expenses and attorney fees of the Commission in defending its decision.~~

(b) The investigative hearing shall be conducted as a contested case under the Alabama Administrative Procedure Act. If the Commission director is licensed to practice law in this state, he or she shall act and serve as hearing officer when designated by the commission. If the director does not serve as the hearing officer, the Commission may designate the assistant director, if licensed to practice law in this state, or another licensed attorney to sit, act, and serve as the hearing officer for purposes of the investigative hearing.

(c) Upon timely application filed within ten (10) days of the request for investigative hearing, any other applicant with a submitted application for the same license offering shall be permitted to intervene upon filing a notice of intervention, which shall be served on the applicant and any other parties of record to the investigative hearing. Other parties asserting a right to intervene under § 41-22-14 Code of Ala. 1975 may also file a motion to intervene within such ten (10) day period for consideration by the hearing officer.

(d) In those license categories where the number of licenses that may be issued by the Commission are limited by statute or rule, the hearing officer may consolidate pending investigative hearing requests for purposes of the hearing.

(e) The Commission shall secure a licensed court reporter, who shall maintain an index of all exhibits identified or offered at the hearing. All parties to the investigative hearing shall be responsible for the cost of any transcripts produced by the court reporter for such party. The hearing officer shall coordinate with the court reporter and Secretary of the Commission to maintain for the Commission an indexed copy of all other filings of record, rulings, and orders from the date of assignment of the case to the hearing officer through the issuance of a final order. The hearing officer shall be responsible for ensuring that all such indexed records are provided to the Commission, with a copy of the indexes (but not underlying documents) simultaneously provided to all parties. Where practicable, the hearing officer and court reporter should provide such indexes and documents to the Commission in PDF form.

(f) All records related to the application and the prior orders issued by the Commission shall be part of the record of the investigative appeal, subject to the provisions of Paragraph (g) below. The Commission's decision in regard to the investigative appeal shall be based on the whole record before the Commission.

(g) The hearing officer may issue a prehearing order requiring parties, a reasonable time before the investigative hearing, to file lists of expected witnesses, together with a general summary of each witness' testimony, copies of documents to be offered as evidence at the hearing and if specifically requested, copies of any documents referred to in the application not otherwise available to the public. The hearing officer shall give due consideration to the protection of trade secrets and other confidential or proprietary information as provided under statute and the Commission's rules and may issue protective orders related thereto.

(h) The hearing officer may also require the direct or redirect examination of a witness through pre-filed testimony in lieu of oral examination. Such pre-filed testimony shall be in written question and answer form and shall be filed at least ten (10) calendar days prior to the hearing, unless directed otherwise by the hearing officer. At the hearing, such pre-filed testimony may, upon motion, be incorporated into the record as if the questions had been asked of the witness and the answers had been given orally, provided such testimony has been properly identified and authenticated under oath by the witness for whom it is presented and further provided that such

witness is made available for cross-examination. In such cases, witnesses may also summarize their testimony orally. Pre-filed testimony may be stricken by the hearing officer on the same grounds applicable to testimony presented through oral examination. The hearing officer may take other measures to streamline the hearing process, including, but not limited to, reasonable limitations on the number of witnesses, time of presentation, and restrictions on the presentation of testimony that is purely cumulative in nature.

(i) The record of the investigative hearing will be made available to all Commissioners participating in the decision. If deemed necessary or helpful by the Commission, acting through the Chair, may instruct the hearing officer to issue a proposed order consistent with § 41-22-15, Code of Ala. 1975. Any such proposed order shall be distributed to all parties who will have ten (10) days to file exceptions or briefs relating to the proposed order. The Commission will schedule the investigative appeal for deliberation and vote at a meeting following the completion of the transcript and the deadline for all filings.

(j) The decision of the Commission on such hearing is considered a final action; ~~thereafter, a disappointed Applicant may appeal, as provided in the~~ triggering the right of appeal as provided in §20-2A-57(f), Code of Ala. 1975, (as amended)). Despite the Commission's announcement of the award of licenses, due to the pendency of hearings or appeals on some or all licenses in a particular offering, some or all licenses may not issue, in the discretion of the Commission, but may be stayed until the time for appeal has lapsed or all appeals from the Commission's decision have resolved, whichever is later. Any deadlines or obligations imposed on licensees based on licensure under these Rules or the Act shall not begin to run until such time as licenses are issued.

(k) This rule, as amended, shall be effective for all investigative hearing requests filed on or after its effective date. The procedures set forth in this rule, as amended, are intended to provide greater detail regarding the investigative hearing process and shall not be construed as a limiting the existing hearing procedures available to the Commission, or the rights of any party, under the Alabama Administrative Procedure Act. If any provision of this Rule, as amended, or the application of such provision or amendment to any person or circumstance is invalidated by a Court, the remainder of this Rule, as amended, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

538-X-3-.12. Third-Party Evaluation and Recommendation.

In the event the Commission opts to act through third-party “agents” (as provided in § 20-2A-55(d), Code of Ala. 1975, (as amended)) or representatives of a State Agency, to perform inspections, examinations, evaluations, and recommendations as to licenses, the Commission remains the primary decisionmaker with regard to licensing and has authority to act independently of any third-party evaluation and recommendation. This means that the Commission has discretion to act consistently with such evaluation and recommendations, to differently weigh the factors contained within such evaluation and recommendations, or to apply different factors and issue licenses based on reasons not considered by the third party, but upon such other factors as the Commission, in its discretion, may deem appropriate. Except as otherwise provided by these rules or ordered by the Commission, ~~the~~ Commission, AMCC Staff, and any entities or individuals contracting with the Commission or its agents, must keep confidential (as defined in 538-x-1-.024) all information and any documents obtained from any inspection, examination or evaluation of any applicant, licensee or individual in connection herewith.

Author: William H. Webster

Statutory Authority: [Code of Ala. 1975, §§ 20-2A-22](#), as amended.

History: Published August 31, 2022; effective October 15, 2022, revised [].

538-X-3-.10. Processing And Evaluation of Applications.

(1) Review. The Commission, one or more independent consultants selected by the Commission, or a combination of the two, shall review submitted applications (either original, amended or as corrected) as described in this Chapter and the instructions accompanying the application form. At least a portion of the review shall be conducted under “blind” conditions, where the reviewers scoring, averaging, or ranking the applications are not made aware of the identity of the applicant or any of the individuals or other entities associated therewith. Any independent consultants selected by the Commission will provide recommendations for the Commission to consider, but the Commission shall not be bound by the recommendation and the decision as to final approval or rejection of licensees shall remain the province of the Commission at all times. Review and evaluation of applications as provided in this Rule may occur at any time during the offering period, from the date of filing requests for application through the date all licenses in the offering have been issued.

(2) Scoring, Averaging and Ranking. Applicants shall be scored, averaged, and ranked using an impartial numerical process in accordance with the requirements of the Act and the Criteria for Awarding Licenses set forth in r. 538-X-3-.11.

(3) Communication during the application process. The Commission, or as applicable, the Department, may engage in communications with an Applicant or others at any time to gather information that may be useful in determining the applicant's suitability as a licensee in a particular category. Applicants and their representatives shall not initiate communications with the Commission or its representatives except as otherwise provided under these Rules. ~~provided in paragraph 3 of 538 X 3 .03 of this Chapter.~~

(4) Public Records and Applicants' Confidential or Proprietary Information. In general, information contained in applications filed by Applicants are public records. Applicants may, through a process to be outlined on the AMCC website at or before the time for filing applications, redact portions of the Application to protect from public view in order to protect confidential or proprietary information. Failure to include a redacted version of the application at the time of filing will result in the entire application being made public. The Commission may, by order or rule, limit the scope of any redactions submitted by an Applicant.

(5) Investigation of Applicant and Owners; Criminal Background Checks. As part of the selection process, the Commission and its representatives shall investigate the Applicant and its owners,

either directly or through a third party with expertise in performing such investigations and/or conducting background checks.

(6) Pre-licensure Inspections of Applicants' Facilities. Prior to issuing a license, the Commission may, in its discretion, either directly or through one or more independent consultants selected by the Commission, or both, conduct a Pre-Licensure Inspection to verify the information received in the Application and to provide further insights to assist in the license determination process. The Commission's decision to conduct a Pre-Licensure Inspection, or not, should not be interpreted as an indication that the Commission ultimately will or will not issue a license to the Applicant.

Author: William H. Webster

Statutory Authority: Code of Ala. 1975, §§ 20-2A-22, as amended.

History: New Rule: Published August 31, 2022; effective October 15, 2022, Revised [].

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538-X-3-.04. Applications And Applications Processing Generally.

(1) Application Fees. Applicants for a license under the Act and this Chapter shall pay a nonrefundable Application Fee in accordance with the most recent Application Fee Schedule approved by the Commission and then in effect, as applicable to the particular license sought. The current Application Fee Schedule may be found at www.AMCC.Alabama.gov (hereinafter, “the AMCC website”).

(2) License Does not Convey Rights; Burden on Applicant. The license granted and issued by the Commission is deemed to be a revocable privilege (§ 20-2A-68, Code of Ala. 1975, (as amended)), and no person or legal entity holding such a license is deemed to have acquired any vested rights therein. An Applicant for a license authorized by the Act or this Chapter is seeking the granting of a privilege rather than a right, and the burden of proving qualification and suitability to receive the license is, at all times, on the Applicant. Responsibility for the continued use of the license is, at all times, on the licensee; licenses are non-delegable and non-transferable except with the express permission of the Commission, as provided in Chapter 4 of these Rules.

(3) Limited Communication -- Generally; Exceptions. The integrity of the application and licensing process is of paramount importance to the Commission and will not be compromised. Throughout the Application Process, Applicants (including all employees, agents and representatives of Applicants and any other individual acting on an Applicant's behalf) must not initiate communication with any member of the Commission or any AMCC staff, officials, or representatives regarding the application, except as follows:

(a) through the “Applicant Questions” portal as provided at the AMCC website;

(b) by written notification to the Commission of a change in the Applicant's Summary Sheet information;

(c) to file an Amended Application, request additional time for filing proposed corrections to a deficiency noted by the Commission, to request additional opportunity to amend the application based on extenuating circumstances, or to request an investigative hearing before the Commission in the event the applicant's license was denied.

To the extent oral communication is deemed to be helpful to resolving any issue or answering any question, AMCC staff will initiate the oral communication, and the result of the oral communication will be memorialized in writing.

(4) limited Communication -- Response to questions and requests for information initiated by AMCC. An applicant shall, as directed, answer questions from, and provide information to, the Commission or its staff, officials, agents, and representatives, including to propose corrections to deficiencies noted; however, unsolicited communications from the Applicant other than through the “Applicant Questions” portal are strictly prohibited. Any unauthorized contact with the Commission or its staff, officials, or representatives during the course of the Application Process may disqualify the Applicant from further consideration.

(5) limited [FN1] Communication -- Applicant Questions; Question Clearinghouse. Questions or requests for assistance regarding the Request for Application, the Application, or the selection process, will be considered only when submitted through the “Applicant Questions” portal at the AMCC website. As the Commission may deem helpful, questions submitted by Applicants to the AMCC website, along with AMCC's response, may be made public for the benefit of other Applicants as part of a Question Clearinghouse database accessible through the AMCC website. Direct communication with Commission members during the application process is strictly prohibited. Ex parte communications by individual Commission members to Applicants (or their representatives) during the application process are unofficial and improper.

(6) limited [FN1] Communication -- Writing Required. Communications to Commission staff in response to any question, whether through the “Applicant Questions” portal or if initiated by the AMCC Staff or other Commission representatives, must be in writing. Any oral communications will be considered unofficial and shall not be binding upon the Commission.

(7) Procedures for Filing Applications -- Request for Application Form -- Initial Offering. As to the initial offering of licenses under the Act and this Chapter, a prospective licensee in any category may “begin applying for a license” as stated in §. 20-2A-53, Code of Ala. 1975, (as amended) (see also § 20-2A-55, Code of Ala. 1975, (as amended): “Beginning September 1, 2022...”) by electronically submitting to the Commission at the AMCC website a Request for Application Form as to one of the various categories of licenses beginning at the window opening time of 10:00 a.m., CDT, on Thursday, September 1, 2022 (For a helpful timetable applicable to the initial offering, see Appendix A to this Chapter). As to the initial offering, the window for submitting a Request for Application Form shall close as of 4:00 p.m., CDT on October 17, 2022, or at 4 p.m. Central Time on the date these Rules become effective, whichever is later.

(8) Procedures for Filing Applications--Subsequent Offerings-- Offering Announcement. As to subsequent offerings, approximately 15-45 days prior to opening a window in one or more categories, the Commission shall issue an Offering Announcement on its website, providing public notice of its intention to offer one or more licenses in one or more categories. In addition to specifying the license or licenses to be offered in a category or categories, the Offering Announcement shall provide Requests for Application Forms, the window of time during which the Request for Application Forms shall be made available, and the time by which Application Forms will be supplied to those who make a timely, properly filled out and properly submitted Request for Application. As to Subsequent Offerings, the Offering Announcement shall include the timetable for the Commission's issuance of licenses to be offered, but such timetables may be amended by the Commission at its discretion.

(9) Procedures for Filing Applications -- Request for Application Form -- Generally. The Commission will respond to properly filled out, properly submitted and timely Requests for Application Forms per category, by electronically supplying the appropriate Application Form. The Request for Application Form shall contain the following information: the category of license being applied for, the Applicant's name, business address, business email address, business telephone number, Social Security Number or Federal Tax Identification Number; as well as the name, business address, email address, and direct dial telephone number of the contact person who will be responsible for fielding and responding to additional requests by the Commission. The Request for Application form shall also contain a verification that the contact person has authority to act on behalf of the applicant and that the Applicant, by filing the Request for Application, voluntarily submits to the Act, these Rules, and the jurisdiction, authority and discretion of the Commission.

(10) Procedures for Application Forms -- Disqualification from Application Process. Requests for Application Forms will not be considered if they are:

- (a) untimely,
- (b) improperly filled out, or
- (c) submitted or attempted to be submitted by any means other than electronically as provided herein.

Request for Application Forms that are untimely (i.e., submitted before the window opens or after the window closes), improperly filled out, or improperly submitted, will not receive an application

form and therefore will not be considered for licensure in the offering. The Commission or its representatives may, in their discretion, contact an Applicant to seek clarification of information provided on the Request for Application Form, but the absence of contact from the Commission to an Applicant, or the Commission's not providing an Application Form when that form was untimely requested, not properly filled out, or improperly submitted, shall not constitute a breach of due process or permit the Applicant a right of appeal under the Act, these Rules or any provision of the Alabama Administrative Procedure Act, § 41-22-1, et seq., Code of Ala. 1975, (as amended) (“AAPA”).

(11) Procedures for Filing Applications -- Issuance of Application Forms -- Timing. As to the initial offering, properly requested Application forms shall issue on Monday, October 24, 2022, or at 4:00 p.m. Central Time on the seventh day from the closing of the window for requesting applications, whichever is later. For subsequent offerings, issuance of application forms shall occur on the date provided in the Offering Announcement.

(12) Procedure for Filing Applications --Form of Application. Applications for licenses under the Act and this Chapter shall be filed with the Commission electronically at the AMCC website and shall be in accordance with the instructions accompanying the electronic application form. The Commission shall not consider any Application, or any part thereof, that has not been filed as provided in this paragraph or that fails to follow the format prescribed by the electronic application form. Notwithstanding anything herein to the contrary, the “filing” of an application as described in these Rules shall not mean that the application is “submitted” pursuant to § 20-2A-56(d), Code of Ala. 1975, (as amended); as provided in Rule 538-X-3-.07, an application is “submitted” such that the 60 days for determining whether to award a license begins to run only when the Commission accepts and approves the application for submission (including any amended applications, proposed corrections or extraordinary circumstances corrections), along with applications filed by other Applicants of a particular category in the same offering.

(13) Procedure for Filing Application -- Time for Filing Application. After receiving an Application Form from the Commission, an Applicant may continue the application process by filing an application in the form specified in Rule 538-3-.05, within the window for filing provided in the Application Form provided to the Applicant. For the initial offering, the window for filing an Application shall begin at 10:00 a.m., CDT, October 31, 2022, or on the seventh day following the Commission's issuance of application forms, whichever is later. The window for filing an

original application shall remain open for no less than 30 days. With respect to the initial offering, all original applications (including all exhibits to be attached thereto) must be filed on or before 4:00 p.m., CST, on December 30, 2022, or sixty days from the date the window opens to file applications, whichever is later.

(14) See Ala. Admin. Code 538-X-3-.20 for supplemental rules governing specified pending applications.

Author: William H. Webster

Statutory Authority: Code of Ala. 1975, §§ 20-2A-22, as amended.

History: New Rule: Published August 31, 2022; effective October 15, 2022, Revised [].

538-X-3-.13. Public Notice and Comment Period: Public Hearing.

Except as may be otherwise provided under these Rules, A 30-day public comment period in compliance with § 20-2A-56(a), Code of Ala. 1975, (as amended) shall begin on the next business day after applications are deemed “submitted” as provided in Rule 538-X-3-.07. As to the initial offering period, applications are deemed submitted as to all original applications, amended applications and applications as to which corrections have been proposed, accepted and approved, upon a vote of the Commission to be taken at its meeting at 1:00 p.m., CDT, April 13, 2023, or the next meeting of the Commission not less than 15 days after the deadline to propose extraordinary-time corrections or to propose amendments to be filed under extenuating circumstances, whichever is later. On the next business day after such date, the Commission shall issue a public notice on the AMCC website, identifying by category of license sought all individuals or entities whose applications have been submitted and who are being considered for license under the Act and this Chapter and providing links to the applications (redacted versions, if provided) supplied by the applicants. Public comments in favor or opposed to granting a license to a particular applicant must be made electronically through the AMCC website, in accordance with the instructions to be provided at that time. The Commission, in its discretion, but in any event during the public notice period and upon at least 7 days' notice, may choose to hold a public hearing as to one or more of the prospective licensees. As to the initial offering, the public notice period expires at 4:00 p.m. CST on Sunday, May 14, 2023, or at 4:00 p.m., Central Time, 30 days after the date public comment is opened, whichever is later.

APPENDIX A. TIMELINE FOR APPLICATIONS AND LICENSING (ASSUMING RULES BECOME EFFECTIVE OCT. 17, 2022)¹

TH September 1, 2022, 10:00 a.m. CDT
Window opens for Request for License Application Forms

MO October 17, 2022, 10:00 a.m., CDT
Deadline for Request for License Application Forms

MO October 24, 2022, 4:00 p.m., CDT
License Application Forms go out to Requestors

MO October 31, 2022, 10:00 a.m., CDT
Window opens to begin accepting License Applications

TU November 1, 2022, 10:00 a.m., CDT
Window opens to begin accepting Amended Applications

FR December 30, 2022, 4:00 p.m., CST
Deadline for original application filings

Deadline for amending previously submitted Applications, barring extenuating circumstances

MO February 13, 2023, 4:00 p.m., CST
Deficiency Notices go out re: all deficient Applications

FR March 3, 2023, 4:00 p.m., CST
Deadline to propose corrections (without extension) re: deficient application.
Deadline to request extension of time for proposed corrections based on extraordinary circumstances

Deadline to seek permission to amend an Application due to extenuating circumstances

FR March 24, 2023, 4:00 p.m., CDT
Deadline to propose deficiency corrections under extraordinary circumstances

Deadline to submit a proposed Amended Application based on extenuating circumstances

TH April 13, 2023, 1:00 p.m., CDT (at Meeting)
By vote of Commission, proposed deficiency corrections formally accepted as submitted
By vote of Commission, extraordinary time deficiency correction requests formally granted or denied

By vote of Commission, submitted deficiencies formally deemed “corrected” or not
By vote of the Commission, Petition to Amend Application due to extenuating circumstances shall be granted or denied and proposed amendments accepted or not
By vote of the Commission, all properly filed and corrected Applications accepted as final and deemed “submitted” as of this date

60 days begins to determine whether license may be issued

FR April 14, 2023, 4:00 p.m., CDT
Public notice as to all Applicants, 30-day public comment begins

TU April 25, 2023, 4:00 p.m., CDT
Public hearing date announced, If necessary

TH May 11, 2023, 10:00 a.m., CDT (at Meeting)
Public hearing date to hear comments on pending Applications

SU May 14, 2023, 4:00 p.m., CDT
Public comment period closes

MO June 12, 2023, NOON, CDT April 13, 2023)

¹ Such deadlines may be extended by Court Order, administrative stay or as provided in the Commission’s Rules.

Initial Licenses Granted or Denied (60 days from
Window opens to pay license fee (if not stayed)
MO June 26, 2023, NOON, CDT
Deadline to request public hearing after denial of license
Window closes to pay license fee (if not stayed)
MO June 26, 2023, 2:00 p.m., CDT
Issue Stay and Set Hearing Dates (if necessary due to appeal)
MO July 10, 2023, NOON, CDT
Licenses Issued (unless appeals are ongoing)

Author: William H. Webster

Statutory Authority: Code of Ala. 1975, §§ 20-2A-22, as amended.

History: New Rule: Published August 31, 2022; effective October 15, 2022, revised [].