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 312 Rosa L. Parks, 8th Floor Snodgrass/TN Tower  
 Nashville, TN 37243  
 Phone: 615.741.2650  
 Fax: 615.741.5133  
 Email: register.information@tn.gov

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# Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

<b>Agency/Board/Commission:</b>	Tennessee Alcoholic Beverage Commission
<b>Division:</b>	
<b>Contact Person:</b>	E. Keith Bell
<b>Address:</b>	226 Capitol Boulevard; Suite 300; Nashville, TN 37243-0755
<b>Phone:</b>	615.741.1602
<b>Email:</b>	Keith.Bell@TN.GOV

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

<b>ADA Contact:</b>	GINNA WINFREE
<b>Address:</b>	226 Capitol Boulevard; Suite 300; Nashville, TN 37243-0755
<b>Phone:</b>	615.741.1602
<b>Email:</b>	GINNA.WINFREE@TN.GOV

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	226 Capitol Boulevard; Suite 300		
Address 2:			
City:	Nashville, TN		
Zip:	37243-0755		
Hearing Date :	02/27/2013		
Hearing Time:	9:00 am	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

**Additional Hearing Information:**

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**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. 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

<b>Chapter Number</b>	<b>Chapter Title</b>
0100-04	Rules of Procedure for Hearing Contested Matters
<b>Rule Number</b>	<b>Rule Title</b>
0100-04-.01	General Procedures for Contested Cases
0100-04-.02	Contested Cases Before Administrative Law Judges of TABC Hearing Officers Sitting Alone
0100-04-.03	Commission Review of Initial Orders

<b>Chapter Number</b>	<b>Chapter Title</b>
0100-04	Rules of Procedure for Hearing Contested Matters
<b>Rule Number</b>	<b>Rule Title</b>
0100-04-.04	Declaratory Orders

<b>Chapter Number</b>	<b>Chapter Title</b>
0100-10	Direct Shipment of Wine Into Tennessee by Out of State Entities
<b>Rule Number</b>	<b>Rule Title</b>
0100-10-.01	Applications for Direct Shipper
0100-10-.02	Taxes (When Due)
0100-10-.03	Enforcement of Rules

(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>)

**RULES  
OF  
TENNESSEE ALCOHOL BEVERAGE COMMISSION  
CHAPTER 0100-01  
RULES FOR THE SALE OF LIQUOR BY THE DRINK  
TABLE OF CONTENTS**

0100-01-.01 Advertising	0100-01-.05 Applications by Private Clubs
0100-01-.02 Solicitation of Business and Services Restricted	0100-01-.06 Additional Rules Applicable to Caterers
0100-01-.03 Conduct of Business	0100-01-.07 Applications for Special Occasion Permits
0100-01-.04 Transfer of Locations	

**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, all on-premise consumption licensees licensed as a hotel shall 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).

16.

**RULES  
OF  
THE TENNESSEE ALCOHOLIC BEVERAGE COMMISSION  
CHAPTER 0100-04  
RULES OF PROCEDURE FOR HEARING CONTESTED MATTERS**

**TABLE OF CONTENTS**

0100-04-.01 General Procedures for Contested Matters	0100-04-.03 Agency Review of Initial Orders
0100-04-.02 Contested Matters Before Administrative Judges Sitting Alone	0100-04-.04 Declaratory Orders

**0100-04-.01 GENERAL PROCEDURES FOR CONTESTED CASES.**

(1) Except as otherwise provided herein, all contested matters before the Commission will be conducted in accordance with T.C.A. §§ 4-5-301 et seq., applicable provisions of Title 57 of the Tennessee Code, with these Rules, and with the Rules of the Secretary of State Chapter 1360-04-.01.

(2) Eligibility to appeal. Any person with legal standing, and who meets the requirements of Title 57 of the Tennessee Code as a licensee/permittee may petition the Commission for a contested matter hearing to appeal an Initial Order of revocation, suspension or civil penalty imposed upon the licensee/permittee by an Administrative Law Judge or TABC Hearing Officer sitting alone. All other appeals and/or review of actions of the Commission shall be conducted pursuant to the applicable provisions of Title 57 of the Tennessee Code.

*Authority: T.C.A. §4-5-301 et seq, Title 57 T.C.A.  
Administrative History: Original rule filed; effective*

**0100-04-.02 CONTESTED CASES BEFORE ADMINISTRATIVE LAW JUDGES OR TABC HEARING OFFICERS SITTING ALONE.**

(1) With the exception of declaratory orders referenced below, all petitions for a contested matter hearing shall be routinely referred to the Administrative Procedures Division, Department of State for hearing before an Administrative Law Judge sitting alone on behalf of the Commission. However, the Commission retains the right to hear any particular contested matter on its own behalf, or before a properly designated TABC Hearing Officer.

(2) In all matters held in accordance with the contested matter provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, Part 3 of the Tennessee Code, and in which sanctions of any kind are imposed on any person or entity required to be licensed, permitted, registered or otherwise authorized by the Commission, whether heard by an Administrative Law Judge or a properly designated TABC Hearing Officer sitting alone, or by the full Agency, the petitioner and other parties, with the exception of the Commission, shall bear the actual and reasonable costs associated with the contested matter including, but not limited to, Secretary of State Administrative Procedures Division, docketing, filing, judges and other costs, cost for all depositions, court reporters, transcriptions, costs incurred and assessed for the time of the prosecuting attorneys, investigators, expert witnesses, administrative law judges, TABC hearing officer and any other persons involved in the investigation, prosecution and hearing of the action. If an Initial Order of an Administrative Law Judge or properly designated TABC Hearing Officer is to be reviewed by the full Commission, whether such review is requested by the party/licensee/permittee or the TABC staff, the original transcript and one copy of the transcript for each member of the Commission shall be provided to the Commission by the other parties/licensees/permittees which cost shall be borne by said party/licensee/permittee and not by the Commission. Other costs of the proceeding, including the Administrative Law Judge's or TABC Hearing Officer's costs shall be assessed by the Commission against the other party/licensee/permittee in accordance with T.C.A § 57-1-213.

(3) Whenever it is necessary to determine the actual and reasonable costs associated with the contested matter, the TABC director, assistant director or staff attorney shall file a sworn affidavit with the Administrative Law Judge or TABC Hearing Officer setting forth an itemized statement of the services

rendered, including, but not limited to, the costs associated with the Secretary of State Administrative Procedures Division for docketing, filing, judges and other costs; cost for all depositions, court reporters and transcriptions; costs incurred and assessed for the time of the prosecuting attorneys, investigators, expert witnesses, administrative law judges, TABC hearing officer and such other persons involved in the investigation, prosecution and hearing of the contested matter as well as the time rendered for each service. The TABC shall make a suggestion of the fee to be awarded along with such other statement(s) of other pertinent facts including but not limited to that required by Tenn. Sup. Ct. R. 8, RPC 1.5, applicable case law, and such other information as may be requested by the Administrative Law Judge or TABC Hearing Officer. The Administrative Law Judge or TABC Hearing Officer shall then award the actual and reasonable costs associated with the contested matter based on the then prevailing rate imposed by the Secretary of State Administrative Procedures Division and the actual costs for all depositions, court reporters, transcriptions and such other persons, (investigators and expert witnesses) involved in the investigation, prosecution and hearing of the contested matter.

(4) Unless otherwise agreed by the parties, at the beginning of all contested matter hearings, Commission counsel shall provide a summary of what the case is about, and introduce into evidence the application and/or Tennessee Alcoholic Beverage Commission license/permit. In no event shall this provision mean that the Commission is a neutral party in contested matters, or that its counsel represents the interests of any party other than the Tennessee Alcoholic Beverage Commission.

(5) In all matters, whether heard by an Administrative Judge or properly designated TABC Hearing Officer sitting alone, or by the full Commission, the party petitioning for such hearing shall present its case first, unless the parties agree otherwise.

*Authority: T.C.A. §§4-5-202, 4-5-223, 4-5-310, 4-5-314, 57-1-213*  
*Administrative History: Original rule filed; effective*

#### **0100-04-.03 COMMISSION REVIEW OF INITIAL ORDERS.**

(1) An Initial Order issued by an Administrative Law Judge or TABC Hearing Officer, sitting alone, may be reviewed by the Commission pursuant to T.C.A §§4-5-301, et seq., these Rules, and the Rules of the Secretary of State Chapter 1360-04-.01. The Commission may, in its discretion, decline to exercise any review of an Initial Order issued by an Administrative Law Judge or TABC Hearing Officer, in which event the Initial Order issued by an Administrative Law Judge or TABC Hearing Officer shall become a Final Order as provided by the Administrative Procedures Act.

(2) In such a review proceeding, The Commission's review is strictly limited to the record which was developed before the Administrative Law Judge or TABC Hearing Officer. No additional evidence is to be received or considered by the Commission.

(3) Such a review proceeding is in the nature of appellate review. Each party will be given the opportunity to file a brief which should specify what action the party maintains the Commission should take on the Initial Order. The Commission may place reasonable page limitations on such briefs to be determined on a case by case basis depending on the number and complexity of the issues to be reviewed.

(4) In such a review proceeding, each party will normally be limited to oral argument of fifteen (15) minutes in length, including rebuttal.

(5) At the conclusion of the review proceeding The Agency may decide that the Initial Order should be adopted in its entirety, or it may make such modifications to the Initial Order as it deems appropriate. Alternatively, The Agency may take the matter under advisement, and subsequently reconvene, after reasonable notice to the parties, to hold its public deliberations and to render a Final Order.

*Authority: T.C.A. §§ 4-5-202, 4-5-223, 4-5-310, 4-5-314, Title 57 T.C.A.*  
*Administrative History: Original rule filed ; effective .*

**0100-04-.04 DECLARATORY ORDERS.**

(1) Any affected person may petition the Commission for a declaratory order, as provided in T.C.A. §4-5-223, as to the interpretation, validity, or applicability of a statute or rule within the primary jurisdiction of the Commission. Such petition shall be filed with the Commission in duplicate, and must specifically identify the statute or rule at issue, and the nature of the ruling sought.

(2) A petition for declaratory order is viewed as primarily involving questions of law and statutory or rule interpretation. The parties should strive to limit the amount of evidence presented, and to stipulate the facts to the fullest extent possible.

(3) In the event the petition for declaratory order arises out of the Commission's action on a specific project or issue, the petition for declaratory order shall be filed within thirty (30) days of the date of the Commission meeting at which the action at issue was taken.

(4) No person may file a petition for declaratory order as to any action or issue which is the subject of a pending or completed contested case proceeding involving the same person.

*Authority: T.C.A. §§ 4-5-202, 4-5-223, 4-5-310, 4-5-314, Title 57 T.C.A.*

*Administrative History:*

**RULES  
OF  
ALCOHOLIC BEVERAGE COMMISSION**

**CHAPTER 0100-10  
DIRECT SHIPMENT OF WINE INTO TENNESSEE  
BY OUT OF STATE ENTITIES**

**TABLE OF CONTENTS**

0100-10-.01 Applications for Direct Shipper  
0100-10-.02 Taxes (When Due)  
0100-10-.03 Enforcement of Rules

**0100-10-.01 APPLICATIONS FOR DIRECT SHIPPER.**

**Application** – An application for such a license shall be made on forms provided for such purpose by the Commission. In addition to completing and filing such forms, an applicant shall pay a NON-REFUNDABLE application fee of \$300 and an annual license fee of \$150, additionally, the application is to be FILLED OUT COMPLETELY, SIGN BY THE APPROPRIATE PRINCIPAL, MANAGER, OWNER OR AGENT, NOTARIZED and mailed with proper payment to the Nashville, Tennessee headquarters of the TABC. The applicant shall also provide the Commission with the following information:

(a) Proof, and a copy, of a federal basic permit pursuant to the Federal Alcohol Administration Act (27 U.S.C. § 201 et seq.).

(b) Proof that entity making application for direct shipper's license is in the business of manufacturing, bottling or rectifying wine. (Direct shipper's license is not available to wholesalers and/or retailers and/or similar types of "middlemen").

(b) If the applicant is not a sole proprietor, evidence of the legal form in which the business is to be operated. (i.e. Corporation, LLC, LP, etc.)

(c) Evidence and copies of business filings (organizational documents) in applicant's home state. (i.e. if a corporation, copy corporate charter, if an LLC, copy of certificate of formation, etc.).

(d) Evidence of applicant's business registration with Tennessee Secretary of State (i.e. registration of foreign name).

(e) Sworn and notarized execution of applicant's consent to jurisdiction and venue for all actions brought before the Tennessee Alcoholic Beverage Commission, any Tennessee state agency or any courts of the state of Tennessee, such that any and all hearings, appeals and other matters relating to the direct shipper's license of the applicant shall be held in the state of Tennessee.

(f) Acknowledgment, in writing, that applicant will contract only with common carriers that agree that any delivery of wine made in the state of Tennessee shall be by face-to-face delivery and that deliveries will only be made to individuals who demonstrate themselves to be twenty-one (21) years of age or older, and which said individual shall sign upon receipt of such wine (copies of all applicant's common carrier contracts are required to be provide to the TABC, additionally if a shipping service is used, include the contract between Applicant and the shipping service and a copy of the contract between the shipping service and the common carrier, i.e. Fed Ex/UPS.).

(g) A copy of Applicant's Certificate of Registration for Sales & Use Tax and a copy of the Wholesale Gallonage Tax Letter, issued by the Tennessee Department of Revenue.

(h) List of Applicant's authorized trade names (these are not required if you have a current Non-Resident Seller's permit issued by the TABC).

(i) A copy of Applicant's Non-Resident Seller's permit, if one has been issued by the TABC.

(j) Acknowledgment, in writing, that as a direct shipper not more than a total of nine (9) liters of wine may be shipped to any individual during any calendar month nor more than twenty-seven (27) liters of wine may be shipped to any individual in any calendar year.

(k) Acknowledge, in writing, that direct shippers may only ship wine to an address that is located in a jurisdiction that has authorized the sale of alcoholic beverages by local option referendum pursuant to Tenn. Code Ann. § 57-3-106.

(l) Acknowledge, in writing, that any shipment of wine by a licensed direct shipper shall be made only in containers which clearly indicate on the exterior of the container, visible to a person at least three feet (3'), that the container "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY."

(m) Acknowledge, in writing, that licensed direct shippers are responsible for remitting all sales taxes due to the State of Tennessee resulting from any sales made pursuant to the Tennessee direct shipper license.

(n) Acknowledge, in writing, that licensed direct shippers are responsible for remitting gallonage taxes as imposed by Tenn. Code Ann. § 57-3-302.

(o) Acknowledge, in writing, that applicant/direct shipper does not have any direct or indirect interest in any business holding a manufacturer, distiller, wholesaler, retailer, winery, or liquor-by-the-drink license issued by the Tennessee Alcoholic Beverage Commission.

(p) Acknowledge, in writing, that licensed direct shippers shall provide to the Commission, upon request and under penalty of perjury, a list of any wine shipped to any address within the state of Tennessee, including the addressee.

(q) Completed questionnaires from each owner, partner or officer.

(r) Compliance with P.C. 1061, the "SAVE Act", Declaration of Citizenship.

#### **0100-10-.02 TAXES (WHEN DUE)**

**Taxes-**The taxes levied on sales made by a direct shipper as authorized by T.C.A. § 57-3-217 and these TABC Rules shall become due and payable on the first day of each month following the month during which the sales occur, and shall become delinquent if not paid on or before the twentieth day of each such following month. For the purpose of ascertaining the amount of tax due, it is the duty of any direct shipper licensed pursuant to this section to transmit to the commissioner of revenue appropriate returns on forms prescribed by the commissioner.

#### **0100-10-.03 ENFORCEMENT OF RULES**

**Rules Enforcement-**The TABC may enforce the requirements of T.C.A. § 57-3-217 and these TABC Rules by administrative action, may suspend or revoke a direct shipper's license and may accept an offer in compromise in lieu of suspension.

(a) A direct shipper that is found to have violated this title, in addition to any fine imposed by the commission, shall reimburse the commission for all costs incurred in connection with the

investigation and administrative action, including the out-of-pocket costs and reasonable personnel costs.

(b) No direct shipper may avoid liability under this section by subcontracting with a third party to perform its obligations required pursuant to this section.

(c) It is an offense for a person who does not possess a direct shipper's license to ship wine to residents of this state and a violation of this TABC Rule and T.C.A. § 57-3-217 (g)(1) is a Class E felony, punishable by a fine only.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 01/04/2013

Signature: E. Keith Bell

Name of Officer: E. Keith Bell

Interim Director, Tennessee Alcoholic Beverage

Title of Officer: Commission

Subscribed and sworn to before me on:

1/4/2013  
Jessica King  
STATE OF TENNESSEE  
NOTARY PUBLIC  
DAVIDSON COUNTY, TENN.

Notary Public Signature:

My commission expires on:

**Department of State Use Only**

My Commission Expires OCT. 18, 2016

Filed with the Department of State on: 1/4/13

Tre Hargett

Tre Hargett  
Secretary of State

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