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Sequence Number: 07-12-16
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MAY 27 2016

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:	Ginna Winfree, Interim Director (also disc acquisition contact)/ or Staff Attorney, Joshua Stepp
Address:	Davy Crockett Tower, 500 James Robertson Parkway, 3 rd Floor, Nashville, TN
Zip:	37243
Phone:	615-741-7628 (G.Winfree) or 615-741-8916 (J.Stepp)
Email:	Ginna.Winfree@tn.gov ; or Joshua.Stepp@tn.gov

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
0100-06	Intra-Industry Conduct And Regulations
Rule Number	Rule Title
0100-06-.05	Dual Permits Prohibited
0100-06-.07	Retail Employee Permits

Chapter Number	Chapter Title
0100-13	Rules for Manager Permits
Rule Number	Rule Title
0100-13-.01	Manager's Permits
0100-13-.02	Obtaining a Manager's Permit

(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://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Rule 0100-06-.05 is amended by deleting the rule in its entirety and by substituting instead, the following language:

0100-06-.05 DUAL PERMITS PROHIBITED.

- (1) No person shall be issued more than one of the following permits:
 - (a) Manufacturer or importer representative permit,
 - (b) Wholesale salesman or representative permit,
 - (c) Wholesale employee's permit,
 - (d) Off premises retail employee's permit,
 - (e) On premises retail employee's permit,
 - (f) Manager's permit.
- (2) Notwithstanding the provisions of 0100-06-.05(1) above, any individual may be issued an off-premise retail employee permit, an on-premise server permit, and a manager's permit, or any combination thereof, if that individual has completed and submitted the appropriate applications. Further, that person must qualify for and meet all the requirements to obtain each permit.
- (3) In all cases, the industry member is responsible for the actions of their employees and/or representatives when such employee and/or representative is acting within the scope of their employment.

Authority: T.C.A. §§57-1-201, 57-1-209, and 57-3-104(c)(4). **Administrative History:**

Rule 0100-06-.07 is amended by adding the following language as a new paragraph (4):

- (4) After the conclusion of business on June 30, 2016, no permit issued pursuant to T.C.A. § 57-3-204(c) shall be issued by the Commission. Any permit issued by such time shall remain in effect and be valid for five years after the permits issuance, and any employee of a retail package store who has a valid permit under § 57-3-204(c) on July 1, 2016, shall not be required to be a certified clerk pursuant to T.C.A. § 57-3-818 until that permit expires.

Authority: T.C.A. §§ 57-1-201, 57-1-209, 57-3-104(c)(4), 57-3-204(c), and 57-3-709. **Administrative History:**

Rules 0100 are amended by adding the following language as a new chapter 13:

**RULES
OF
TENNESSEE ALCOHOLIC BEVERAGE COMMISSION**

**CHAPTER 0100-13
RULES FOR MANAGER PERMITS**

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0100-13-.01	Manager's Permits	0100-13-.02	Obtaining a Manager's Permit
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0100-13-.01 MANAGER'S PERMITS

- (1) A manager's permit shall be required of any individual operating, supervising or managing a retail package store licensed pursuant to T.C.A. § 57-3-204, a retail food store licensed pursuant to T.C.A. § 57-3-801, *et seq.*, or a winery involved in retail sales licensed pursuant to T.C.A. § 57-3-207.
- (2) Notwithstanding the provisions of 0100-06-.05(1) above, any individual may be issued both an off-premise retail employee permit and an on-premise server permit if that individual has completed and submitted the appropriate applications. Further, that person must qualify for and meet all the requirements to obtain each permit.
- (3) An individual licensed as a sole proprietorship pursuant to T.C.A. §§ 57-3-204, 57-3-207 or 57-3-801 *et seq.*, shall be authorized to engage in the activities outlined herein without the requirement of a manager's permit.
- (4) A manager's permit may be suspended or revoked by the Commission for any violation of Title 57 of the Tennessee Code and/or the rules and regulations of the Commission committed by the holder of the manager's permit or by any person operating under the supervision of the holder of the manager's permit.

Authority: T.C.A. §§57-1-209, 57-3-104(c)(4), and 57-3-221. **Administrative History:**

0100-13-.02 OBTAINING A MANAGER'S PERMIT

- (1) Any individual seeking a manager's permit shall complete the application form established by the Commission, along with a completed declaration of citizenship (Form AB-0116) and any other information that the Tennessee Alcoholic Beverage Commission may request.
- (2) Any applicant for a manager's permit shall pay the permit fee to the Commission prior to being issued the permit. This permit fee is fixed at \$200.00 pursuant to § 57-3-221(c);
- (3) Any individual who either has a manager's permit or is seeking a manager's permit shall annually attend:
 - (a) Either a responsible beer vendor training program pursuant to Rules 0100-08 or a responsible wine vendor training program pursuant to Rules 0100-12; and
 - (b) A two (2) hour course taught by the Commission or by an entity authorized by the Commission, at such place and time as may be specified by the Commission. Such two (2) hour course may cover any material deemed appropriate by the Commission and may include, but not necessarily be limited to, a review of recent changes in the law, a review of certain statutes, rules, and regulations as decided upon by the Commission, and an opportunity for a question and answer session.
- (4) Any individual applying for a manager's permit shall attend, and provide proof of attendance to, the training program and the training course required by paragraph (3) of this rule prior to the issuance of a manager's permit to such individual. Any such training shall be valid for only one year, and any such training attended more than one year from the date of application for a manager's permit shall not be sufficient to satisfy the requirements of this rule.

Authority: T.C.A. §§57-1-209, 57-3-104(c)(4), and 57-3-221. **Administrative History:**

* 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 Jones</i>				<i>John Jones</i>
Bryan Kaegi	✓				<i>Bryan Kaegi</i>

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Alcoholic Beverage Commission (board/commission/ other authority) on 04/26/2016 (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: 01/13/2016

Rulemaking Hearing(s) Conducted on: (add more dates). 03/09/2016

Date: 4.26.16

Signature: *Ginna Winfree*

Name of Officer: Ginna Winfree

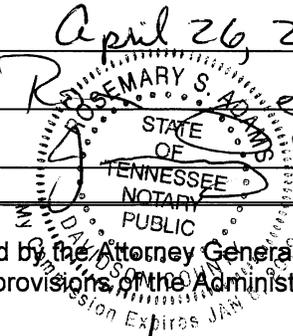
Title of Officer: TABC Interim Executive Director

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Subscribed and sworn to before me on: April 26, 2016

Notary Public Signature: *Rosemary S. Adams*

My commission expires on: 8, 2019



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.

Herbert H. Slatery III
 Herbert H. Slatery III
 Attorney General and Reporter

6/16/2016
 Date

Department of State Use Only

Filed with the Department of State on: 7/7/16

Effective on: 10/5/16

Tre Hargett
 Tre Hargett

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.

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 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.

Public Acts 2014, ch. 554 (commonly referred to as the Wine in Grocery Stores Act) requires that managers of licensed retail food stores, retail package stores, and wineries obtain certain training and be issued a manager permit. This rule conforms to the statute and specifies the training that is to be obtained. The rule benefits small businesses by ensuring and providing proper training for managers of such small businesses to ensure proper compliance with the applicable laws and rules. An exact number of such small businesses affected is impossible to estimate at this time, but is expected to be substantial and significant. The requirements specified in the rule are designed to effectuate the purpose and requirements of Public Acts 2014, ch. 554, and any other applicable statute, and there are no less burdensome, intrusive, or costly method for effectuating such purpose and requirements. There are no state or federal counterparts for which this rule can be effectively compared to. The exemption of small businesses from this rule would be detrimental to the small businesses of this state and would be contrary to statute.

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 proposed rule is not projected to have any direct 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;

Public Acts 2014, ch. 554 (commonly referred to as the Wine in Grocery Stores Act) requires that managers of licensed retail food stores, retail package stores, and wineries obtain certain training and be issued a manager permit. This rule conforms to the statute and specifies the training that is to be obtained.

- (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;

T.C.A. § 57-3-221 as passed by the Public Acts 2014, ch. 554 (commonly referred to as the Wine in Grocery Stores Act) which requires the issuing of manager permits along with certain training.

- (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;

Licensed retail food stores, retail package stores, and wineries and their managers. To the knowledge of the TABC, except as may be specified in comments made at the rulemaking hearing, there is no objection to this rule.

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

At the time of this filing, there are no such opinions or rulings directly relating to the rule.

- (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;

A conservative estimate of managers needing the permit is 1,000, and at \$200 fee per manager permit issued on a five year basis, a conservative estimate is \$200,000 in revenues and a similar amount in costs relating to the issuance of the permits and related regulatory work.

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

Interim Executive Director Ginna Winfree and Staff Attorney Joshua Stepp

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

Staff Attorney Joshua Stepp

- (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

Staff Attorney Joshua Stepp – 615-741-8916 – Joshua.Stepp@tn.gov
Davy Crockett Tower
500 James Robertson Pkwy - 3rd Floor
Nashville, TN 37243-0755

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

At the time of filing, no such request has been made.



STATE OF TENNESSEE
ALCOHOLIC BEVERAGE COMMISSION
DAVY CROCKETT TOWER
500 JAMES ROBERTSON PKWY, 3rd FLOOR
NASHVILLE, TENNESSEE 37243-0755

PHONE 615.741.1602

FAX 615.741.0847

MEMO

From: Ginna Winfree, Interim Executive Director

Re: Responses to comments made at public rulemaking hearing

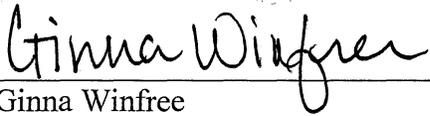
Date: April 01, 2016

On March 9, 2016, a rulemaking hearing was held in accordance with the law. At the hearing, various comments were made regarding proposed new Rule 0100-13 and revisions to Rule 0100-06. Below is a summary of the comments and the Tennessee Alcoholic Beverage Commission's (TABC's) responses to such comments:

- (1) LENGTH OF LEGAL TRAINING – Rule 0100-13-.02(3)(b) – Comments were made suggesting that the training regarding applicable laws and rules be changed from 2 hours to one hour with an additional up to one hour open for questions. Upon further review of the proposed rule, while the proposed rule requires a 2 hour training, it specifically states that such training may include a “question and answer session”. Thus the suggested change is already reflected in the current proposed rule, and any change in the proposed rule would be unnecessary.
- (2) REOCCURANCE OF RESPONSIBLE VENDOR TRAINING - Rule 0100-13-.02(3) - Comments were made suggesting that the Responsible vendor portion of the training Rule 0100-13-.02(3)(a) only be done every two years rather than every year, while the legal portion under Rule 0100-13-.02(3)(b) would still be done every year since the applicable laws and rules may change on a yearly basis. Pending Rule 0100-12-.02(5)(b)(2) regarding the Responsible Wine Vendor Program requires that such training be done annually for certified clerks. Due to their nature as managers and their potential need to also act as certified clerks, the TABC deems that it is proper for such training to be performed on an annual basis
- (3) CONFLICTS OF INTERESTS – Rule 0100-06-.05(1) – Comments were made suggesting that the proposed rules be revised to allow a manager's permittee to also possess a server and/or employee (for retail package store) permit. The TABC agrees and the proposed rules have been modified to reflect such change.
- (4) REASSIGNING OF PERMIT – Rule 0100-10-.01 and Pending Rule 0100-11-.03(9) – A comment was made proposing the addition of a new rule in Rule 0100-10-.01 regarding the reassignment of manager permittee's. This proposal is already covered by Pending

Rule 0100-11-.03(9)(b) which states: "A designated permitted manager of a retail food store may transfer his or her permit to another retail food store wine licensee by notifying the Commission in writing of the effective date of the transfer. All transfer notifications must be made prior to the designated permitted manager(s) involvement in the placement of wine orders at the new retail food store wine licensee's location." This pending rule already addresses the issue raised by said comment.

Sincerely,

A handwritten signature in cursive script that reads "Ginna Winfree". The signature is written in black ink and is positioned above a horizontal line.

Ginna Winfree
Interim Executive Director
Tennessee Alcoholic Beverage Commission
(615)741-7628

RED-LINE VERSION

0100-06-.05(1) amended by deleting paragraph in entirety and by substituting instead, the following language.

0100-06-.05 DUAL PERMITS PROHIBITED

- (1) No person shall be issued more than one of the following permits:
 - (a) Manufacturer or importer representative permit,
 - (b) Wholesale salesman or representative permit,
 - (c) Wholesale employee's permit,
 - (d) Off premises retail employee's permit,
 - (e) On premises retail employee's permit,
 - (f) Manager's permit.
- (2) Notwithstanding the provisions of 0100-06-.05(1) above, any individual may be issued both an off-premise retail employee permit, ~~and an on-premise server permit, if that individual has completed and submitted the appropriate applications and a manager's permit, or any combination thereof,~~ if that individual has completed and submitted the appropriate applications. Further, that person must qualify for and meet all the requirements to obtain each permit.
- (3) In all cases, the industry member is responsible for the actions of their employees and/or representatives when such employee and/or representative is acting within the scope of their employment.

Authority: T.C.A. §§57-1-201, ~~and~~ 57-1-209, and 57-3-104(c)(4). **Administrative History:**

Rule 0100-06-.07 is amended by adding the following language as a new paragraph (4):

- (4) After the conclusion of business on June 30, 2016, no permit issued pursuant to T.C.A. § 57-3-204(c) shall be issued by the Commission. Any permit issued by such time shall remain in effect and be valid for five years after the permits issuance, and any employee of a retail package store who has a valid permit under § 57-3-204(c) on July 1, 2016, shall not be required to be a certified clerk pursuant to T.C.A. § 57-3-818 until that permit expires.

Authority: T.C.A. §§ 57-1-201, 57-1-209, 57-3-104(c)(4), 57-3-204(c), and 57-3-709. **Administrative History:**

Rules 0100 are amended by adding the following language as a new chapter 13:

RULES
OF
TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 0100-13
RULES FOR MANAGER PERMITS

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<u>0100-13-.01</u>	<u>Manager's Permits</u>	<u>0100-13-.02</u>	<u>Obtaining a Manager's Permit</u>
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0100-13-.01 MANAGER'S PERMITS

- (1) A manager's permit shall be required of any individual operating, supervising or managing a retail package store licensed pursuant to T.C.A. § 57-3-204, a retail food store licensed pursuant to T.C.A. § 57-3-801, et seq., or a winery involved in retail sales licensed pursuant to T.C.A. § 57-3-207.
- (2) Notwithstanding the provisions of 0100-06-.05(1) above, any individual may be issued both an off-premise retail employee permit and an on-premise server permit if that individual has completed and submitted the appropriate applications. Further, that person must qualify for and meet all the requirements to obtain each permit.
- (3) An individual licensed as a sole proprietorship pursuant to T.C.A. §§ 57-3-204, 57-3-207 or 57-3-801 et seq., shall be authorized to engage in the activities outlined herein without the requirement of a manager's permit.
- (4) A manager's permit may be suspended or revoked by the Commission for any violation of Title 57 of the Tennessee Code and/or the rules and regulations of the Commission committed by the holder of the manager's permit or by any person operating under the supervision of the holder of the manager's permit.

Authority: T.C.A. §§57-1-209, 57-3-104(c)(4), and 57-3-221. **Administrative History:**

0100-13-.02 OBTAINING A MANAGER'S PERMIT

- (1) Any individual seeking a manager's permit shall complete the application form established by the Commission, along with a completed declaration of citizenship (Form AB-0116) and any other information that the Tennessee Alcoholic Beverage Commission may request.
- (2) Any applicant for a manager's permit shall pay the permit fee to the Commission prior to being issued the permit. This permit fee is fixed at \$200.00 pursuant to § 57-3-221(c);
- (3) Any individual who either has a manager's permit or is seeking a manager's permit shall annually attend:
 - (a) Either a responsible beer vendor training program pursuant to Rules 0100-08 or a responsible wine vendor training program pursuant to Rules 0100-12; and
 - (b) A two (2) hour course taught by the Commission or by an entity authorized by the Commission, at such place and time as may be specified by the Commission. Such two (2) hour course may cover any material deemed appropriate by the Commission and may include, but not necessarily be limited to, a review of recent changes in the law, a review of certain statutes, rules, and regulations as decided upon by the Commission, and an opportunity for a question and answer session.
- (4) Any individual applying for a manager's permit shall attend, and provide proof of attendance

to, the training program and the training course required by paragraph (3) of this rule prior to the issuance of a manager's permit to such individual. Any such training shall be valid for only one year, and any such training attended more than one year from the date of application for a manager's permit shall not be sufficient to satisfy the requirements of this rule.

Authority: T.C.A. §§57-1-209, 57-3-104(c)(4), and 57-3-221. **Administrative History:**