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 Effective Date: 11/2/15

# Rulemaking Hearing Rule(s) Filing Form

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

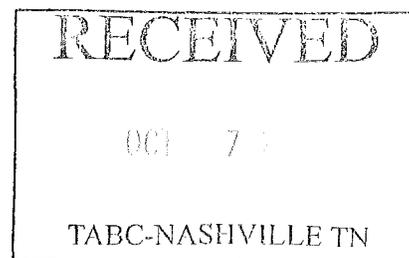
|                                 |  |
|---------------------------------|--|
| <b>Agency/Board/Commission:</b> | Tennessee Alcoholic Beverage Commission  |
| <b>Division:</b>                |  |
| <b>Contact Person:</b>          | E. Keith Bell  |
| <b>Address:</b>                 | Davy Crockett Tower; 500 James Robertson Parkway, 3rd Floor; Nashville, TN 37243 |
| <b>Phone:</b>                   | 615.741.1602   |
| <b>Email:</b>                   | Keith.Bell@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   |
|----------------|---|
| 0100-10        | Direct Shipment of Wine Into Tennessee by Out of State Entities |
| Rule Number    | Rule Title  |
| 0100-10-.01    | Applications for Direct Shipper                                 |
| 0100-10-.02    | Taxes (When Due)  |
| 0100-10-.03    | Enforcement of Rules  |



**CHAPTER 0100-10  
DIRECT SHIPMENT OF WINE**

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0100-10-.01 Applications for Direct Shipper  
0100-10-.02 Taxes (When Due)  
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**0100-10-.01 APPLICATIONS FOR DIRECT SHIPPER.**

An application for a direct shipper's 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, SIGNED 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:

- (1) Proof, and a copy, of a federal basic permit pursuant to the Federal Alcohol Administration Act (27 U.S.C. § 201 et seq.).
- (2) 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").
- (3) 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..
- (4) Evidence and copies of business filings (organizational documents) in applicant's home state, i.e. if a corporation, a copy of the corporate charter, and if an LLC, a copy of the certificate of formation, etc.
- (5) Evidence of applicant's business registration with Tennessee Secretary of State, i.e. registration of foreign name.
- (6) 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.
- (7) 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 provided 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, e.g. Fed Ex/UPS.
- (8) 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.
- (9) 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).
- (10) A copy of Applicant's Non-Resident Seller's permit, if one has been issued by the TABC.
- (11) 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.

- (12) Acknowledgement, 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') away, that the container "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY".
- (13) Acknowledgement, 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.
- (14) Acknowledgement, in writing, that licensed direct shippers are responsible for remitting gallonage taxes as imposed by Tenn. Code Ann. § 57-3-302.
- (15) Acknowledgement, in writing, that licensed direct shippers shall provide to the Commission or its designated agent, upon request and under penalty of perjury, a list of any wine shipped to any address within the state of Tennessee, including the addressee.
- (16) Completed questionnaires from each owner, partner or officer.
- (17) Compliance with P.C. 1061, the "SAVE Act", Declaration of Citizenship.

*Authority: T.C.A. § 57-3-217*

*Administrative History: Original rule filed; effective*

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

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.

*Authority: § 57-3-217*

*Administrative History: Original rule filed; effective*

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

- (1) 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.
- (2) 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.
- (3) No direct shipper may avoid liability under this section by subcontracting with a third party to perform its obligations required pursuant to this section.
- (4) 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.

*Authority: T.C.A. § 57-3-217*

*Administrative History: Original rule filed; effective*

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

| Board Member  | Aye | No | Abstain | Absent | Signature (if required) |
|---------------|-----|----|---------|--------|-------------------------|
| Mary McDaniel |     |    |         |        | <i>Mary McDaniel</i>    |
| John Jones    |     |    |         |        | <i>John a Jones</i>     |
| Bryan Kaegi   |     |    |         |        | <i>Bryan Kaegi</i>      |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Alcoholic Beverage Commission on 07/22/14, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 1/04/2001<sup>3</sup> 2013 <sup>EKB</sup>

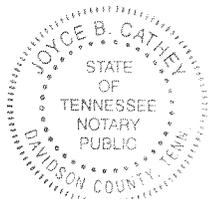
Rulemaking Hearing(s) Conducted on: (add more dates). 02/27/2013

Date: 9-23-14

Signature: *S. Keith Bell*

Name of Officer: Keith Bell

Title of Officer: Director of Alcoholic Beverage Commission



Subscribed and sworn to before me on: 9/23/14

Notary Public Signature: *Joyce B. Cathey*

My commission expires on: 7/6/15

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

*Robert E. Cooper, Jr.*  
 Robert E. Cooper, Jr.  
 Attorney General and Reporter  
9-30-14  
 Date

**Department of State Use Only**

RECEIVED  
 2014 OCT 14 PM 12:24  
 SECRETARY OF STATE

Filed with the Department of State on: 10/14/14

Effective on: 11/12/15

*Tre Hargett*  
 Tre Hargett  
 Secretary of State

## **Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Copy of response to comments is included with filing.

## Responses to Comments

The commission received public hearing comments on this rule as summarized, with commission response below.

Comment: Bill Hubbard, attorney representing Tennessee Farm Winegrowers Association (TFWA), argued that Proposed Rules 0100-10-.01(k) and 0100-10-.01(o), as specified in the Notice of Rulemaking Hearing and as specified below, be deleted due to a lack of statutory authority for such rules. The relevant proposed Rules were as follows:

(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.

(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.

Agency Response: The commission agreed with Bill Harper that pursuant to the 2011 amendment to TCA 57-3-217(d)(2), Proposed Rule 0100-10-.01(k) should be removed from the proposed rule, and the commission agreed with Bill Harper that pursuant to TCA 57-3-217(a), Proposed Rule 0100-10-.01(o) should be removed from the proposed rule. As such, both Proposed Rule 0100-10-.01(k) and Proposed Rule 0100-10-.01(o) were stricken from the record, and the Proposed Rule 0100-10-.01 was renumbered accordingly.

## Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

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

New Rule 100-10-.02 substantially codifies T.C.A. § 57-3-217(e)(1) and (2), and, therefore, the rule is exempt from the requirements of T.C.A. § 4-5-401, et seq.

New Rule 100-10-.03(a) substantially codifies T.C.A. § 57-1-213, and, therefore, the rule is exempt from the requirements of T.C.A. § 4-5-401, et seq.

New Rule 100-10-.03(b) substantially codifies T.C.A. § 57-3-217(e)(6), and, therefore, the rule is exempt from the requirements of T.C.A. § 4-5-401, et seq.

New Rule 100-10-.03(c) substantially codifies T.C.A. § 57-3-217(g), and, therefore, the rule is exempt from the requirements of T.C.A. § 4-5-401, et seq.

### Economic Impact Statement for Proposed Rule 100-10-.01

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

Any small business that applies for or receives licensure as a direct shipper would be affected by the proposed rule. Generally, such licensure authorizes the licensee to make sales and delivery of wine by common carrier to the citizens of this state over the age of 21 who have purchased the wine directly from the direct shipper.

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

The projected administrative costs of small businesses with complying with the proposed rule is minimal as the majority of the licensure requirements require the submission of copies of fillings, documents, or permits already filed with or received from other states or agencies; the filling out of a questionnaire, the acknowledgement of various state law requirements, and compliance with state law regarding citizenship.

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

The proposed rule was drafted to facilitate the licensure of direct shippers, to clarify the licensure requirements of applicant direct shippers, and to educate applicants of the state law requirements regarding direct shipper licenses.

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

The licensure requirements of the proposed rule are necessary to ensure that applicants for a direct shipper license comply with all state law requirements (including the requirements of T.C.A. §§ 57-3-217 and 4-58-103), and there are no less burdensome, intrusive, or costly alternative methods to ensure that such requirements are met.

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

The licensure requirements for a direct shipper license pursuant to T.C.A. § 57-3-217 and these proposed rules is comparable to, and not significantly more or less burdensome than, other licensure requirements of the commission or of other state agencies.

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

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

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rules are not anticipated to have an impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules create new regulations for direct shippers by detailing the documents and information that must be included in an application for a direct shipper's license which may be issued pursuant to T.C.A. § 57-3-217, specifying when taxes on sales made by a direct shipper are due, and informing applicants of a direct shipper's license the potential penalties for a violation of state law or these rules.

- (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;

Many of the requirements of the proposed rules mirror the requirements of T.C.A. § 57-3-217 which established the direct shipper license.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All persons or entities who may apply for, may receive, or have received a license from the commission as a direct shipper. The Tennessee Farm Winegrowers Association (TFWA), as represented by Bill Hubbard, expressed two concerns concerning the initial proposed rule, but those concerns were addressed prior to final adoption of the proposed rules, and neither TFWA nor any other entity has expressed any other concerns or issues regarding the proposed rules with the commission.

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

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The fiscal impact would be minimal.

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

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

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

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

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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

No such request received to date.