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File Date: 1/17/17

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.

Agency/Board/Commission:	Tennessee Alcoholic Beverage Commission
Division:	
Contact Person:	Clay Byrd, Executive Director
Address:	500 James Robertson Pkwy, 3 rd Floor, Nashville, TN 37243
Phone:	615-741-7620
Email:	Clay.Byrd@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:

ADA Contact:	Zack Blair
Address:	500 James Robertson Pkwy, 3 rd Floor, Nashville, TN 37243
Phone:	615-741-7628
Email:	Zack.Blair@tn.gov

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

Address 1:	Tennessee Alcoholic Beverage Commission	
Address 2:	500 James Robertson Pkwy, 3 rd Floor	
City:	Nashville	
Zip:	37243	
Hearing Date :	03/14/2017	
Hearing Time:	1:00 PM	<input checked="" type="checkbox"/> CST/CDT <input type="checkbox"/> EST/EDT

Additional Hearing Information:

The hearing will be held in the conference room on the third floor of the Davy Crockett Tower. Written comments will be accepted via email at TABC.Info@tn.gov for (ten) 10 days following the public hearing. Only those comments received at the following email address will be considered: TABC.Info@tn.gov . The comments must be within the scope of the rules listed on the notice of rulemaking hearing to be considered. Those individuals not present at the hearing are welcome to submit written comments.

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
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0100-11	Rules for Sales of Wine at Retail Food Stores
Rule Number	Rule Title
0100-11-.02	Issuance of Initial Licenses
0100-11-.03	Conduct of Business

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

RULES OF THE TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 0100-11 RULES FOR SALES OF WINE AT RETAIL FOOD STORES

Rule 0100-11-.02 is amended by deleting the rule in its entirety and by substituting instead, the following language:

0100-11-.02 Issuance of Initial Licenses.

A retail food store wine applicant may not sell wine to patrons or customers, in sealed packages only, and not for consumption on the premises until it has been issued a retail food store wine license.

Authority: T.C.A. §§ 57-3-104 and 57-3-803.

Rule 0100-11-.03 is amended by deleting the rule in its entirety and by substituting instead, the following language:

0100-11-.03 Conduct of Business.

(1) Advertising.

- (a) The provisions of rules, 0100-03-.01, 0100-03-.02, 0100-03-.03, 0100-03-.04, 0100-03-.05, 0100-03-.06, 0100-03-.07, and 0100-03-.08 apply to retail food store wine licensees in the same manner as they apply to off premises retailers licensed pursuant to T.C.A. § 57-3-204.
- (b) The minimum price at which a retail food store wine licensee may sell or advertise a particular wine is twenty percent (20%) more than the price per bottle of the particular wine on the retail food store wine licensee's most recent wholesaler invoice.
- (c) A retail food store wine licensee whose business is one of a chain of stores shall not advertise a price lower than the highest minimum price per bottle for all the chain's stores in the geographic area the advertisement may reach.
- (d) The advertised price per bottle shall not represent or assume a case discount unless the requirement of a case purchase is conspicuously stated in the advertisement.
- (e) A retail food store wine licensee's advertisement shall not use the words "exclusive" or "exclusively" in reference to wine.
- (f) A retail food store wine licensee's advertisement may use the phrase "select varieties" only when advertising a brand, but not a specific type of that brand. If the advertisement uses the phrase "select varieties," then each wine type from that brand shall be available at the advertised price. The phrase "select varieties" shall not be used if the advertisement identifies a particular brand and type.

(2) Wine that May Be Sold.

- (a) The commission will analyze particular products on a case-by-case basis to determine whether a product may be sold in a retail food store. In determining which products are included in the definition of "wine" at T.C.A. § 57-3-802(2), the following factors, among others, will be considered:
 - 1. whether the product has had substantial changes due to the addition of flavorings and additives;
 - 2. whether the product had been sold in grocery, convenience, and similar stores before July 1, 2016;
 - 3. the specific nature of the product and the manufacturing process; and
 - 4. the manner in which the product is marketed and labeled.
 - (b) The nature of the product and the manufacturing process are critical factors for determining whether a product is included in the definition of "wine" at T.C.A. § 57-3-802(2).
 - (c) The labeling, suffix, or prefix of the product as descriptive of a fruit or other product, and as descriptive of a wine, is another critical factor for determining whether a product is included in the definition of "wine" at T.C.A. § 57-3-802(2). The label must specify that the product is a wine and the label must specify the fruit or other product from which the wine is predominately produced.
- (3) Responsibility for Penalties and Violations.
- (a) Licensees are at all times responsible for the conduct of their business and are at all times directly responsible for any act or conduct of any employee which is in violation of the laws of Tennessee, the rules and regulations of the Commission, whether the licensee be present at any such time or not. This section is defined to mean that any unlawful, unauthorized, or prohibited act on the part of an agent or employee shall be construed as the act of the licensee, and the licensee shall be proceeded against as though it were present and had an active part in such unlawful, unauthorized, or prohibited act, and as if having been at the licensee's direction and with its knowledge.
 - (b) In disciplinary proceedings, it shall be no defense that an employee or agent of a licensee acted contrary to an order, or that a licensee did not personally participate in the unlawful, unauthorized, or prohibited action or actions. However, mitigating factors as permitted under the Responsible Wine Vendor program may be considered by the Commission.
 - (c) In a disciplinary actions brought against a retail food store wine licensee, any suspension or revocation of a license shall suspend or revoke the ability of the retail food store to sell wine and accept deliveries of wine from wholesalers. A suspension or revocation of a license shall not affect the ability of the retail food store to remain open or to sell other items not regulated by the TABC, including food items, non-food items, and beer.
- (4) Pricing of Wine at Retail Food Stores.
- (a) Pursuant to T.C.A. section 57-3-903, the minimum price at which a retail food store wine licensee may sell or advertise a particular wine is twenty percent (20%) more than the price per bottle of the particular wine on the retail food store wine licensee's most recent wholesaler invoice.
 - (b) A wholesaler's invoice for wine sold to a retail food store wine licensee shall state the cost per bottle of each wine, including all taxes, fees, and charges passed on from the wholesaler to the retail food store wine licensee. These taxes, fees, and charges include, but are not limited to:

1. gallonage taxes;
 2. enforcement taxes;
 3. municipal inspection fees;
 4. transportation costs or surcharges;
 5. split case fees; and
 6. restocking charges.
- (c) A retail food store wine licensee shall not apply discounts offered under customer discount cards to the price of wine.
- (d) Exceptions to the Unfair Wine Sales Law.

A retail food store wine licensee may sell or advertise wine at a price that would otherwise be impermissible in the following circumstances:

1. during the final liquidation of a licensee's business;
 2. under the direction of a court, such as a bankruptcy court;
 3. when offering a closeout, which is a reduced price on a brand of wine that will no longer be sold by a particular retail food store; provided that:
 - (i) the retail food store wine licensee sold the brand offered at closeout for at least one hundred twenty (120) days before the beginning date of a closeout sale;
 - (ii) the closeout sale shall not last more than ninety (90) days; and
 - (iii) the retail food store wine licensee shall not sell the brand of wine sold at closeout for at least one (1) year after the closeout sale concludes; and
 4. when offering a discount on a case of wine, which may include various brands of wine chosen by the consumer and which must include at least:
 - (i) twelve (12) bottles containing seven hundred fifty (750) milliliters of wine;
 - (ii) six (6) bottles containing one and a half (1.5) liters of wine; or
 - (iii) four (4) boxes containing three (3) liters of wine.
- (5) **Delivery of Wine.** A wholesaler may deliver wine to a retail food store wine licensee at any time the retail food store location is open to the public and shall deliver only to the business address of the retail food store licensee at its customary loading dock.
- (6) **All Licensees Must Keep Records Available Three Years.** Each licensee shall keep, for at least three (3) years; all purchase orders, invoices and all other records of all purchases and sales of wine made by such licensee. All such orders, invoices, and all other books and records pertaining to the licensee's operation shall be open for inspection to any authorized representative of the Tennessee Alcoholic Beverage Commission or Department of Revenue and failure to make such available shall be deemed cause for revocation of its license. Such records may be maintained in electronic format, and will be deemed available and open for inspection if the Commission or the Department of Revenue can review such records at the licensed premises or, if such records are stored in a central office, can be supplied to the Commission or Department of Revenue within three (3) business days upon request.

- (7) Hours Licensee may Sell Wine. A Retail Food Store may sell wine only between the hours of 8:00 a.m. and 11:00 p.m. on Monday through Saturday. A Retail Food Store may not make any sale of wine on Sunday or on Christmas, Thanksgiving, Labor Day, New Year's Day, or the Fourth of July.
- (8) Mandatory Carding. Prior to making a sale of wine, a Retail Food Store certified clerk must inspect a valid unexpired government issued form of identification to ensure that the purchaser is over the age of 21. The inspection of the identification must take place in a face-to-face transaction. Any government-issued document that has expired shall not be deemed to be "valid" for purposes of T.C.A. § 57-3-808, and as such, a retail food store may not sell wine to a person who has not provided an unexpired government-issued document that meets the requirements of T.C.A. § 57-3-808.
- (9) Sales to Intoxicated Customers. A retail food store shall not make a sale of wine to a customer who is visibly intoxicated or accompanied by a person who is visibly intoxicated.
- (10) Customer assistance. An employee of a retail food store may assist customers with loading wine in their vehicles as long as the vehicle is parked in the parking area of the licensee and such parking area is identified in the application of the retail food store. A retail food store permitted clerk must check the identification of any person purchasing wine as part of the sale prior to assistance being given to that customer by an employee with loading of wine to a vehicle.
- (11) Managers.
 - (a) Each retail food store wine licensee shall have at least one designated permitted manager, but may have two or more designated permitted managers. Only the retail food store wine licensee's designated permitted manager(s) may place orders for wine with wholesalers. A designated permitted manager may not be assigned to more than one retail food store wine licensee.
 - (b) 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.
- (12) Free Access to Licensed Premises Without Warrant. Immediate access, without a warrant, to all parts of a retail food store shall at all times be accorded agents, officers or representatives of the Commission.
- (13) Refusal of Cooperation. Any licensee, his agent, or employee who refuses to open or disclose records to, or furnish information to, or who furnishes false and/or misleading information to an agent, officer or representative of the Commission upon any matter relating to or arising out of the conduct of the retail food store premises shall subject the license to revocation or suspension.
- (14) Licensee Responsible For Law and Order on Licensed Premises. Each licensee shall maintain his establishment in a decent, orderly and respectable manner in full compliance with all laws of Tennessee, Commission rules and regulations, federal statutes, and ordinances and laws of the municipality and/or county where the licensed premises are located at all times. The renting or leasing of the licensed premises for an event to a nonlicensed entity, person or corporation is specifically deemed not to be a defense for a violation of this rule and does not diminish licensee's responsibility to comply with this rule.
- (15) Restriction as to Age of Licensee's Employees. Nothing herein shall prohibit a licensee from hiring a person under the age of 18 years, however employees under the age of 18 shall not be permitted to sell wine, beer, malt beverages or hard cider in any establishment licensed under the provisions of T.C.A. § 57-3-803.

- (16) Purchases. Only the designated permitted manager(s) of a retail food store wine licensee may place orders for wine with wholesalers. No discounts for wine may take into account orders for wine at other locations owned by the licensee.

Authority: T.C.A. §§ 57-3-104, 57-3-202, 57-3-210, 57-3-404, 57-3-406, 57-3-412, 57-3-802, 57-3-803, 57-3-807, 57-3-808, 57-3-811, 57-3-812, 57-3-815, 57-3-903 and 57-3-909.

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

RULES OF THE 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

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 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, 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 \$50.00 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 one (1) 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 one

(1) 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. §§ 57-3-104 and 57-3-221.

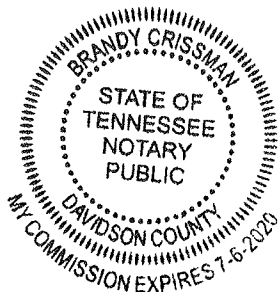
I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 1-17-17

Signature: *Clayton V. Byrd*

Name of Officer: Clayton V. Byrd

Title of Officer: Executive Director, TABC



Subscribed and sworn to before me on: January 17, 2017

Notary Public Signature: *Brandy Crissman*

My commission expires on: 7-6-2020

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Filed with the Department of State on: 1/17/17

Tre Hargett

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Secretary of State

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