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Sequence Number: 10-14-21
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File Date: 10/20/2021

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: Ebony Connor
Address: Davy Crockett Tower, 3rd Floor, 500 James Robertson Pkwy, Nashville, TN
Zip: 37243
Phone: 615-741-8930
Email: Ebony.Connor@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: Sean Atkins
Address: Davy Crockett Tower, 3rd Floor, 500 James Robertson Pkwy, Nashville, TN
Phone: 615-741-8930
Email: Sean.J.Atkins@tn.gov

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

Address 1:	Davy Crockett Tower, 3 rd Floor, 500 James Robertson Pkwy		
City:	Nashville		
Zip:	37243		
Hearing Date:	12/16/21		
Hearing Time:	2:00 P.M.	<input checked="" type="checkbox"/> X CST/CDT	<input type="checkbox"/> EST/EDT

Microsoft Teams (virtual):

https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F%20%23%2F%2Fmeetup-join%2F19%3Ameeting_Y2Y1ZmU5ZDMtZDZINy00DcyLWI5ZmltYmYzMTk3OTRmOTUw%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%2522f345bebf-0d71-4337-9281-24b941616c36%2522%252c%2522Oid%2522%253a%2522d8e12ed5-4879-4745-9fec-38cc4165f4a1%2522%257d%26CT%3D1634667750946%26OR%3DOutlook-Body%26CID%3D9459E9AD-6B1B-4833-AB5A-AF5547D42C23%26anon%3Dtrue&type=meetup-join&deeplinkId=99836b57-c486-4078-9a35-bcfb1bd38af7&directDI=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true

Additional Hearing Information:

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
0100-10	Direct Shipment of Wine to Consumers in Tennessee
Rule Number	Rule Title
0100-10-.01	Applications for Winery Direct Shipper License

Chapter Number	Chapter Title
0100-10	Direct Shipment of Wine to Consumers in Tennessee
Rule Number	Rule Title
0100-10-.02	Taxes (When Due)

Chapter Number	Chapter Title
0100-10	Direct Shipment of Wine to Consumers in Tennessee
Rule Number	Rule Title
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>)

Rule 0100-10-.01 is amended by deleting the present language in its entirety and replacing it with the following:

Winery direct shipper license applicants are required to submit complete applications for each owner with at least ten (10) percent ownership, partner and/or officer in a manner specified by the Commission. In addition to completing an application, applicants are required to pay a NON-REFUNDABLE application fee of \$300.00 and, upon approval of the application, an annual license fee of \$150.00. The applicant will also provide the Commission with the following:

- (1) A copy of a federal basic permit issued pursuant to the Federal Alcohol Administration Act (27 U.S.C. § 201et. seq.) authorizing the permittee to engage in the business of wine production. Federal basic permits related to distilled spirits production, the importation of alcoholic beverages in the United States, or wholesale of alcoholic beverages are not acceptable.
- (2) A list of all wine brands that the applicant intends to sell under the license. Only wine brands that are included in the application and accepted by the Commission may be sold and shipped to Tennessee consumers by the winery direct shipper. Winery direct shippers are prohibited from selling brands associated with another winery direct shipper license. If TABC determines that there is an absence of sufficient proof that a listed brand is produced pursuant to this paragraph, TABC has discretion to remove the brand from the list of accepted brands from the application and the winery direct shipper is prohibited from selling the removed brand under its winery direct shipper license.
- (3) Proof that wine brands intended to be sold in Tennessee are owned by or licensed to the winery and are either:
 - (a) Produced by the winery;
 - (b) Produced exclusively for the winery under an existing written contract with the winery or farm winery;
or
 - (c) Produced and bottled exclusively for the winery;
 - (d) Brand names and authorized trade names that are disclosed on the federal basic permit establish that the brand is owned by or licensed to the winery. A Certification/Exemption of Label /Bottle Approval (COLA) reflecting the permittee's name or authorized trade name and documentation that it was bottled by the entity also establishes that the brand is owned by or licensed to the winery. If TABC determines that there is an absence of sufficient proof that a listed brand is produced pursuant to this paragraph, TABC has discretion to remove the brand from the list of accepted brands from the application and the winery direct shipper is prohibited from selling the removed brand under its winery direct shipper license.
- (4) An unexpired copy of the state license authorizing the winery direct shipper to produce wine or have wine produced as described in paragraph (3). A winery direct shipper license only authorizes the sale of wine produced at a single winery. Applicants seeking to sell and ship wine from multiple wineries must obtain a winery direct shipper license for each winery.
- (5) Evidence of business registration with the Tennessee Secretary of State (i.e. registration of the foreign name)
- (6) Electronic acknowledgement and consent to jurisdiction and venue for all actions brought before the Tennessee Alcoholic Beverage Commission, any Tennessee state agency, or any courts within Tennessee related to the direct shipper license.
- (7) Electronic acknowledgement that applicant will only contract with common carriers who agree that any wine delivered in Tennessee will be by face-to-face delivery to individuals that demonstrate that they are over the age of twenty-one (21) and require a signature upon receipt of delivery.
- (8) A copy of the common carrier contract(s).
- (9) A copy of the contract(s) between Applicant and the fulfillment house(s), if applicable.
- (10) Effective January 1, 2022, Tennessee licensed direct shippers are only authorized to contract with TABC licensed fulfillment houses for wine shipments into Tennessee. Winery direct shipper applicants are

responsible for providing TABC updated lists and corresponding contracts for each fulfillment house with whom the entity contracts.

- (11) An exhaustive list of website addresses on which Applicant will sell wine for shipment into Tennessee.
- (12) Electronic acknowledgement that applicant will list its Tennessee winery direct shipper license number on any website on which it sells wine for shipment into Tennessee.
- (13) Electronic acknowledgement that Applicant may not sell alcoholic beverages other than wine as defined by T.C.A. § 57-3-101 for shipment into Tennessee.
- (14) Electronic acknowledgement that Applicant may not sell wine brands other than those disclosed in its application and accepted by the Commission that meet the requirements of T.C.A. § 57-3-217.
- (15) Electronic acknowledgement that Applicant will not sell alcoholic beverages for shipment in Tennessee on any website not disclosed on the application and accepted by the Commission.
- (16) Electronic acknowledgement that winery direct shippers producing two hundred seventy thousand (270,000) liters or more of wine per calendar year may not ship more than twenty-seven (27) liters of wine to an individual in a calendar year.
- (17) Electronic acknowledgement that winery direct shippers producing two hundred seventy thousand (270,000) liters or less of wine per calendar year may not ship more than fifty-four (54) liters of wine to an individual in a calendar year.
- (18) A copy of Applicant's Certificate of Registration for Sales & Use Tax and a copy of the Wholesale Gallonage Tax Letter, both of which are issued by the Tennessee Department of Revenue.
- (19) Electronic acknowledgement that a winery direct shipper may not ship more than nine (9) liters of wine to an individual in a calendar month or twenty-seven (27) liters of wine to an individual in a calendar year.
- (20) Electronic acknowledgement that any shipment of wine by licensed direct shippers will be made in containers that are clearly marked on the exterior of the container, visible to a person at least three feet (3') away, one (1) meter, that the container "CONTAINS ALCOHOL: SIGNATURE OF A PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY."
- (21) Electronic acknowledgement that the licensed direct shipper is responsible for remitting all sales tax due to the State of Tennessee from any sales made under the Tennessee direct shipper license.
- (22) Electronic acknowledgement that the licensed direct shipper is responsible for remitting gallonage taxes as imposed by T.C.A. § 57-3-302.
- (23) Electronic acknowledgement that the licensed direct shipper is required to provide quarterly reports in the manner specified by the Commission that lists the following:
 - (1) The name, address, and license number of the fulfillment house used, if applicable;
 - (2) The name of the common carrier, if no fulfillment house is used;
 - (3) The date of each shipment;
 - (4) The carrier tracking number
 - (5) The quantity, by weight or other means, the sales price, and the product type of wine shipped; and
 - (6) The name and address the of recipient.
- (24) Compliance with P.C. 1061, the "SAVE Act," Declaration of Citizenship.

Authority: T.C.A. § 57-3-217

Rule 0100-10-.02 is amended by deleting the present language in its entirety and replacing it with the following:

The taxes levied on sales made by a winery direct shipper as authorized by T.C.A. § 57-3-217 and these TABC Rules are due and payable on the first day of each month following the month during which the sales occur, and are delinquent if not paid on or before the twentieth day of the following month. For the purpose of ascertaining the amount of tax due, it is the duty of any direct shipper licensed under this section to transmit to the Tennessee Department of Revenue the appropriate returns on forms required by the Commissioner of the Tennessee Department of Revenue.

Authority: T.C.A. § 57-3-217

Rule 0100-10-.03 is amended by deleting the present language in its entirety and replacing it with the following:

- (1) The TABC is authorized to enforce the requirements of T.C.A. § 57-3-217 and these TABC Rules by administrative action, has discretion to suspend or revoke a direct shipper's license, and has a right to accept an offer in compromise in lieu of suspension.
- (2) TABC has a duty to recover all costs incurred in connection with the investment and administration action, including the out-of-pocket costs and reasonable personnel costs, in addition to any fine imposed by the Commission, when a winery direct shipper is found to have violated this title.
- (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 a Class E felony, punishable by fine, for a person that does not possess a winery direct shipper's license to ship wine to residents of Tennessee and a violation of this TABC Rule and T.C.A. § 57-3-217 (g)(1).

Authority: T.C.A. § 57-3-217

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: 10/19/21

Signature: Russell F Thomas

Name of Officer: Russell F Thomas

Title of Officer: Director



Subscribed and sworn to before me on: 10/19/21

Notary Public Signature: Joyce B. Cathey

My commission expires on: 3/7/23

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Filed with the Department of State on: 10/20/2021

Tre Hargett
Tre Hargett
Secretary of State

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