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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:	
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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 here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. 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. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Rule 0100-10-.01 Applications for Direct Shippers

~~An application for a direct shipper's license shall be made on forms provided for such purpose by the Commission. A winery direct shipper license applicant is required to submit a complete application in a manner specified by the Commission, and a separate business owner questionnaire for each owner, partner, and/or officer with at least ten (10) percent ownership interest. In addition to completing and filing such forms, an applicant shall pay a NONREFUNDABLE 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 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. Additionally, The applicants shall must 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.) A copy of a federal basic permit issued pursuant to the Federal Alcohol Administration Act (27 U.S.C. § 201 et. 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) 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") 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 and/or its agent, the licensed fulfillment house. 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) 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.. 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 may be used to 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 may also establish that the brand is owned by or licensed to the winery. This is a non-exhaustive list the Commission shall consider in making this determination. If TABC determines that there is an absence of sufficient proof that a listed brand is produced pursuant to this paragraph, TABC retains the discretion to remove the brand from the list of brands provided on the application and the winery direct shipper is prohibited from selling the removed brand under its winery direct shipper license.~~~~
- ~~(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.. 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 applicant's business registration with Tennessee Secretary of State, i.e. registration of~~

foreign name.

- (5) 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.
- (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. 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.
- (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. A copy of the common carrier contract(s), if applicable.
- (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. A copy of the contract(s) between Applicant and the licensed fulfillment house(s), if applicable.
- (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). Winery direct shipper applicants are responsible for providing TABC with updated lists and corresponding contracts for each fulfillment house with whom the winery contracts.
- (10) A copy of Applicant's Non-Resident Seller's permit, if one has been issued by the TABC. An exhaustive list of website addresses on which Applicant will sell wine for shipment into Tennessee. Applicants are required to notify the Commission of any changes throughout the license year in a manner specified by the Commission.
- (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. Electronic acknowledgement that the applicant shall include its Tennessee winery direct shipper license number, in at least one (1) location that a reasonable person can locate, on any website from which the applicant, sells wine for direct shipment into Tennessee.
- (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". 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.
- (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. 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.
- (14) Acknowledgement, in writing, that licensed direct shippers are responsible for remitting gallonage taxes as imposed by Tenn. Code Ann. § 57-3-302. 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.
- (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. 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.

- (16) Completed questionnaires from each owner, partner or officer. 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.
- (17) Compliance with P.C. 1061, the "SAVE Act", Declaration of Citizenship. Electronic acknowledgement that a winery direct shipper may not ship more than nine (9) liters of wine to an individual in a calendar month.
- (18) Sufficient information to establish that Applicant is registered with the Tennessee Department of Revenue to pay applicable Sales & Use Taxes and Gallonage Taxes or is otherwise eligible to submit Sales & Use Taxes and Gallonage Taxes to the Tennessee Department of Revenue.
- (19) 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."
- (20) 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.
- (21) Electronic acknowledgement that the licensed direct shipper is responsible for remitting gallonage taxes as imposed by T.C.A. § 57-3-302.
- (22) 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.
- (23) Compliance with the Eligibility Verification for Entitlements Act as codified in T.C.A. 4-58-101, et seq.

Authority: T.C.A. § 57-3-217

Rule 0100-10-.02 Taxes (When Due)

The taxes levied on sales made by a winery direct shipper as authorized by T.C.A. § 57-3-217 and these TABC Rules ~~shall become~~ are due and payable on the first day of each month following the month during which the sales occur, and ~~shall become~~ are delinquent if not paid on or before the twentieth day of ~~each such~~ the following month. The wine gallonage tax is delinquent if not paid by the fifteenth 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 ~~commissioner of revenue~~ Tennessee Department of Revenue the appropriate returns on forms ~~prescribed~~ required by the Commissioner of the Tennessee Department of Revenue.

Authority: T.C.A. § 57-3-217

Rule 0100-10-.03 Enforcement of Rules

- (1) The TABC ~~may~~ is authorized to enforce the requirements of T.C.A. § 57-3-217 and these TABC Rules by administrative action, ~~may~~ has discretion to suspend or revoke a direct shipper's license, and ~~may~~ has a right to 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.~~ It is a Class E felony, punishable by fine, for a person or entity that does not possess a winery direct shipper license or a fulfillment house license to ship wine to Tennessee residents and a violation of this TABC Rule and T.C.A. § 57-3-217 (g)(1).

Authority: T.C.A. § 57-3-217

