



**State of Arkansas
Department of Finance
And Administration**

DFA - ARKANSAS TOBACCO CONTROL

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**PROPOSED ARKANSAS TOBACCO CONTROL RULE AMENDMENTS
AMENDED EXECUTIVE SUMMARY**

I. PURPOSE

Arkansas Tobacco Control (“ATC”) is seeking legislative review and approval of proposed amendments and changes to various ATC Rule sections. Rule sections are divided as follows: Section 1 through Section 20.

ATC is proposing its Rule amendments and other changes for the following key reasons:

- To incorporate statutory revisions made by the Arkansas General Assembly;
- To make provisions consistent with state law; and
- To make minor revisions to update or correct various typographical, stylistic, grammatical and formatting errors throughout.

Pursuant to A.C.A. § 4-75-701, *et al.*, A.C.A. § 26-57-201, *et al.*, and A.C.A. § 5-27-227, ATC has the authority to promulgate rules pertaining to tobacco control in the State of Arkansas.

II. KEY POINTS OF PROPOSED SUBSTANTIVE CHANGES - AMENDED CHANGES

The first submission of the proposed ATC rule amendments included new rules governing online cigar sales and delivery, Sections 4.3 through 4.9.

Based upon comments made during the public comment period (discussed in a separate document, “Responsive Summary,”) the Arkansas Tobacco Control Board approved the pulling of Sections 4.3 through 4.9 from the proposed ATC rule amendments for further review and later promulgation of those rules. The remaining proposed rule amendments remain unchanged and are as follows.

In addition to minor revisions to update or correct various typographical, stylistic, grammatical and formatting errors throughout, the proposed key rule changes include the following:

- A. **Changes to Section 7: Update permit fee schedule to mirror fees contained in A.C.A. § 26-57-219.**
 - Both Act 1235 of the 90th General Assembly, Regular Session, 2015, and Act 1071 of the 92nd General Assembly, Regular Session, 2019, amended the fee schedule in A.C.A. 26-57-219.
- B. **Addition of Replacement Notice or Transfer Form: Update rules to include a form for permittees to use to obtain “permission” pursuant to Act 386 of 2021.**

- Act 386 of the 93rd General Assembly, Regular Session, 2021, amends the prohibition on selling without a permit to allow a “person purchasing an existing permitted retail location” to “operate under the selling owner’s permit for no more than thirty (30) days from the date of the sale[.]” *with the permission of the Seller and the Division of Tobacco Control.*

C. Changes to Sections 9 and Section 16: Update rebating language to harmonize with the language of Act 942 of 2021.

- Act 942 of 2021 added a definition for “Rebate” and provided that rebating is not unlawful when a wholesaler gives “a rebate if the rebate is paid by check or electronic direct deposit and does not result in a sale at less than the cost to the wholesaler according to § 4-75-02(5)(A), less discounts that are received by the wholesaler from the manufacturer.”

D. Formatting Changes. Re-number paragraphs for uniformity throughout.

E. Removal of Unnecessary Rule Provisions. Remove unnecessary and confusing rule provisions to comply and/or harmonize with applicable statutes.

III. SUMMARY OF PROPOSED CHANGES CHART

In addition to the key changes described above, ATC proposed rule changes include the following amendments further detailed in the chart below.

**Summary of Proposed Changes
Rules for Arkansas Tobacco Control Board
CHART**

REVISION BY SECTION	SUPPORTING INFORMATION
Section 1 - General	
<ul style="list-style-type: none"> 1.1. Change language “Chairman” to “Chair; also change language “his” to “his/her” 1.2. Change structure of last sentence and change language “Chairman” to “Chair of the Board.” 	<ul style="list-style-type: none"> Change language to match language used in Statute (A.C.A. § 26-57-255). Change sentence structure for clarity and better understanding; change “Chairman” language to match language used in Statute (A.C.A. § 26-57-255) a
Section 2 – Permit Applications - Generally	
<ul style="list-style-type: none"> 2.1. Add language “Other, “vapor products, alternative nicotine products, e-liquid products or other tobacco products,” and “the Arkansas Tobacco Products Tax Act of 1977. 2.3. Replace language “It shall be the obligation of all permit holders to keep on file with the Board a 	<ul style="list-style-type: none"> To better comply with language used in A.C.A. § 26-57-219 and A.C.A. § 26-57-214.

<p>current address or the current address of an agent for service of process” to “All permit holders must keep a current address or the current address of an agent for service of process on file with the Agency.” Replace language “Board” with “Agency.”</p> <ul style="list-style-type: none"> ▪ 2.4. Replace language “Arkansas Tobacco Control Board (the “Board.”) with “Agency.” ▪ 2.5. Replace language “privilege tax” with “payment” ▪ 2.6. Add language/paragraph section: <p>“2.6 Replacement Notice or Transfer Forms. All permit transfers and all use of a previous permit for thirty (30) days as specified under A.C.A. § 26-57-214, A.C.A. § 26-57-215 and A.C.A. § 26-57-221 must be completed on forms provided by the Agency. Such Replacement Notice or Transfer forms must be submitted to the Agency as a part of any new permit application.”</p> ▪ 2.7. Replace language “Each and every” with “All”; replace language “shall be” with “are”; add language to publicly display his/her permit”; remove language “before doing any business under any permit issued pursuant to any tobacco laws in the State of Arkansas, to post his/her permit in a conspicuous place in the primary office or room where the business is carried on and shall at all times keep his/her permit displayed” ▪ 2.8. Add language “Agency” and remove language “Upon request by the Board, any and all records of any permit holder shall be provided to the Board at any meeting of the Board.” Renumber paragraph. ▪ 2.9. Remove language “being” and renumber paragraph. 	<ul style="list-style-type: none"> ▪ For consistence terminology usage throughout and for clarity. ▪ For consistent terminology usage throughout. ▪ Change language for clarity and harmony with intent of A.C.A. § 26-57-219. ▪ Act 386 of 2021 requires “permission of the seller and the Division of Tobacco Control.” This rule provides for a form to effectuate the permission component of Act 386. Authorized by A.C.A. § 26-57-256(a)(3). ▪ Change existing language for clarity and better understanding. ▪ Change language for clarity and better understanding; remove unnecessary and potentially confusing language that is sufficiently covered by statutory law. ▪ Change existing language for clarity and better understanding.
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Section 3 – Wholesale Permit Applications	
<ul style="list-style-type: none"> ▪ 3.3. Add language “agreement” ▪ 3.4. Remove language “of the Board” and add the language “of the Agency.” ▪ 3.5. Remove paragraph/language: “The applicant shall be of good moral character. An individual owner shall submit three letters as to his moral character; a partnership shall submit two letters of moral character for each partner; a corporation or other entity shall submit two letters of moral character for each of the stockholders or owners holding more than five percent (5%) interest in the permitted business. No form letters will be accepted to satisfy this requirement.” ▪ 3.9. Remove paragraph/language: “3.9 <u>Sales by Wholesalers</u> - No wholesaler shall sell cigarettes or tobacco products to any individual, partnership, corporation or other entity unless said individual, partnership, corporation or other entity is duly licensed to resell said cigarettes or tobacco products. ” ▪ 3.10. Remove paragraph/language: “3.10 <u>Purchases by Wholesalers</u> - Wholesalers shall purchase cigarettes and tobacco products only from other wholesalers or manufacturers who are registered pursuant to A.C.A. § 26-57-215(1).” 	<ul style="list-style-type: none"> ▪ To add clarity as to what type of “lease, rental or ownership” documents are required. ▪ Change language for consistent terminology usage throughout. ▪ Remove language not mandated by statute and no longer useful in the wholesale application process. ▪ Change for clarity and better understanding, as such provisions are not mandated by statute and are otherwise adequately addressed by Statute (A.C.A. § 26-57-232). ▪ Change for clarity and better understanding, as such provisions are not mandated by statute and otherwise conflict with Statute (A.C.A. § 26-57-203(37)).
Section 4 – Retail Permit Holders	
<ul style="list-style-type: none"> ▪ 4.1. Change language “the Arkansas Control Board” to “Arkansas Tobacco Control” 	<ul style="list-style-type: none"> ▪ Change language to better harmonize with Statute (A.C.A. § 26-57-256 and A.C.A. § 26-57-257).
Section 5 – Objections to the Issuance of Permits	
<ul style="list-style-type: none"> ▪ 5.1. Remove language “of the Board” and add language “must state the nature of the relevant facts and” ▪ 5.3. Remove language originally under 5.3, “<u>Objections Must State Relevant Facts</u> All petitions and objections must state the nature of the relevant 	<ul style="list-style-type: none"> ▪ For clarity and better understanding, the phrase “must state the nature of the relevant facts” was moved from 5.3 to 5.1.

<p>facts that are alleged.” Re-number original 5.4 to 5.3, in light of the above removal.</p>	<ul style="list-style-type: none"> ▪ Language changed to reduce redundancy and to ensure clarity and understanding, as such a provision is already addressed by Sections 5.1 and 5.2.
<p>Section 6 – Expiration of Permits – Renewals</p>	
<ul style="list-style-type: none"> ▪ 6.2. Add language “cigarettes or other” and “or other tobacco products” 	<ul style="list-style-type: none"> ▪ Grammatical/sentence structure change for clarity and consistency.
<p>Section 7 - Fees</p>	
<ul style="list-style-type: none"> ▪ 7.1. Replace outdated fees and fee-related language with updated fees and fee-related language provided by Statute 	<ul style="list-style-type: none"> ▪ Change to match language and fees provided by Statute (A.C.A. § 26-57-219; Act 1071 of 2019)
<p>Section 9 – Rebates and Concessions</p>	
<ul style="list-style-type: none"> ▪ <i>In light of recent legislation, replace outdated rebate definitions and prohibitions with the below added language.</i> ▪ Add definition language: “Rebate” means a payment made by a seller of cigarettes to a purchaser of cigarettes after the sale that serves as a discount or return of part of an amount previously given in payment by the purchaser of cigarettes. ▪ Add definition language: “Concession” has the same meaning as “Rebate.” ▪ Add definition language: “Cost to wholesaler” means the basic cost of the cigarettes involved to the wholesaler plus the cost of doing business by the wholesaler as evidenced by the standards and methods of accounting regularly employed by him or her and must include, without limitation, labor costs, including salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising. The cost of doing business is presumed to be four (4%) of the basic cost of cigarettes to the wholesaler unless a cost of doing business application is submitted pursuant to ATC Rule 15.1. 	<ul style="list-style-type: none"> ▪ Change and add language to comply with Statute (A.C.A. § 4-75-708; Act 942 of 2021) ▪ Change and add language to harmonize with Statutes (A.C.A. § 4-75-702 and A.C.A. § 4-75-708); Act 942 of 2021. ▪ Change and add language to harmonized with Statutes (A.C.A. § 4-75-702(5)(A); A.C.A. § 4-75-209; and A.C.A. § 4-75-708); Act 942 of 2021.
<p>Section 10 – Hearing Procedures</p>	
<ul style="list-style-type: none"> ▪ 10.2. Add language “A.C.A. 25-15-201 et seq.” 	<ul style="list-style-type: none"> ▪ For clarity and understanding, add statutory citation.

<ul style="list-style-type: none"> ▪ 10.3. Replace language “respondent” with “permit holder”; replace language “at the Board’s Office, if any” with “Agency” 	<ul style="list-style-type: none"> ▪ Change language for clarity, consistency and better understanding.
Section 11 – Grounds for Revocation, Suspension, Nonrenewal of Permits or Issuance of a Civil Penalty	
<ul style="list-style-type: none"> ▪ 11.1. Change capitalization of terms “Revocation,” “Suspension,” “Issuance” and “Non-renewal” to lowercase letters and add language “of a license or permit” ▪ 11.1(A). Replace language “Rules and Regulations of the Board” with “these Rules.” 	<ul style="list-style-type: none"> ▪ Change to match lowercase language used in Statute (A.C.A. § 26-57-255(g)(2)) and add language “of a license or permit” for clarity as to what is being revoked, suspended, issued or non-renewed. ▪ Change for clarity, better understanding and/or consistency with language used in ATC statutes (A.C.A. § 26-57-206).
Section 12 – Enforcement of Ark. Code Ann. § 5-27-227	
<ul style="list-style-type: none"> ▪ 12.1. Replace language “Licensees” with “Permittee”; remove language “by a non-licensee of the Board”; replace language “Board” with “Agency” ▪ 12.2. Replace language “Board with “Agency” ▪ 12.3(C). Remove all language in 12.4, 12.4(A)–(F) and 12.5(A)–(C) pertaining to mitigating factors and affirmative defenses; remove language “and Regulations” 	<ul style="list-style-type: none"> ▪ Change for clarity, better understanding and/or consistency. ▪ To mirror “Agency” language used throughout Rules for clarity and better understanding. ▪ Language in 12.4, 12.4(A)–(F) and 12.5(A)–(C) is outdated, adds confusion as written and is unnecessary in light of statutory provisions related to mitigating factors and affirmative defenses contained in Ark. Code Ann. § 5-27-227; the phrase “and Regulations” is unnecessary and removed for clarity and readability.
Section 15 – Unfair Cigarette Sales	
<ul style="list-style-type: none"> ▪ 15.1(D). Replaced the term “affect” with the term “effect.” ▪ 15.2(C)(1)(b) –(e). Formatting edits. The language itself does not change. 	<ul style="list-style-type: none"> ▪ Grammar change. ▪ Change to formatting for clarity and readability.
Section 16 – Advisory Opinions	

▪ **16.1. Add language** “an unlawful” before the term “Rebate” and the term “Concession.”

▪ Change to comply with Statute (A.C.A. § 4-75-708; Act 942 of 2021)