



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

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**BOARD MEETING MINUTES
JUNE 2, 2022**

The Arkansas Tobacco Control Board met on Thursday, June 2, 2022, for its monthly meeting in the Main Street Mall Building, located at 101 E. Capitol Avenue, Little Rock, Arkansas, beginning at 10:00 a.m. in Suite 119. There were eight (8) Board members present.

- **Board Members Present:** Chairman Gary Proffitt Jr., Mr. Kerry Lott, Mr. David Hendrix Jr., Dr. Brad Mayfield, Mr. Sam Stathakis Jr., Mr. Brent Summerhill, Dr. Patricia Knott and Dr. Shabbir Dharamsey arriving late.
- **Absent Board Members:** None

CALL TO ORDER.

- Chairman Gary Proffitt called the ATC Board meeting to order and opened the meeting welcoming the guests and staff.

BOARD MEETING MINUTES

Chairman Gary Proffitt requested a motion to approve the board meeting minutes from May 5, 2022. A motion was made by Mr. Sam Stathakis and seconded by Dr. Brad Mayfield to approve the May 5th, 2022 minutes. Motion passed with seven (7) yes votes and one (1) absent.

PROPOSED ATC RULES

Attorney Will Olson presented the Proposed ATC Rules regarding online cigar sales and delivery. In doing so, Attorney Will Olson also provided the Board a brief timeline of these proposed ATC Rules, which included some changes to previously proposed online cigar sales and delivery rules based on comments made during the previous public comment period.

Mr. Sam Stathakis asked about section 4.9 of the proposed rules pertaining to the collection of taxes and the impact the rule has on whether or not a retailer is still required to buy tobacco products from a licensed Wholesaler. Attorney Will Olson responded and noted that section 4.9 does not add any new obligations for retailers.

Chairman Gary Proffitt asked if his concerns pertaining to identification upon ordering cigars online would be taken care of by requiring identification upon delivery. Attorney Will Olson responded by noting that Section 4.5 still requires name, address, payment information, date of birth and phone number, in conjunction with the requirement of identification upon delivery.

Mr. David Hendrix Jr. asked if the new permit application forms previously reviewed by the ATC Board contained any new requirements reflected in the proposed online cigar sales and delivery rules. Attorney Will Olson responded by stating that, if and when the proposed rules received final approval, any new online cigars sales and delivery rules will be posted on the ATC website and that the new ATC permit application forms pertaining to retailers do contain a cigar section with questions specific to online cigar sales and delivery.

Chairman Gary Proffitt also asked if ATC had looked into how the Agency will check Sales to Minor compliance checks on online cigar retailers. ATC Director Sled responded and provided that ATC would complete compliance checks. The burden of selling to a minor falls on the retailer, not the common carrier. ATC can place orders and wait for delivery to a minor, and respond accordingly.

Mr. Brent Summerhill asked about the process of selling and purchasing cigars online. He also asked where the liability of selling to a minor falls, if a common carrier fails to check identification. Director Sled confirmed the process and stated that the burden falls back on the retailer, under the proposed rules.

Sam Stathakis also asked whether a common carrier failing to do its job and check identification creates an issue with the retailer at the time of any subsequent violation. Attorney Will Olson provided that under the Sales to Minor statutes there are defenses that retailers may raise and that ATC can look at the facts of a given case at that time before issuing a violation. Attorney Olson also noted that at the brick-and-mortar retail level, stores are not required to use scanning devices to check identification, but many do, and, in using such devices, the store is still liable for a sale to minor even if the scanning devices is in error – again, stores can raise certain defenses to violations. Director Sled also provided that State Law does not require retailers to check ID. Such retailers are simply prohibited from selling to minors.

Dr. Patricia Knott asked, if there is not a requirement to check identification under State Law, then why do the proposed rules include a requirement for identification upon delivery. Attorney Olson responded by mentioning that unlike some other similar state rules, these proposed rules would apply to out-of-state sales. Therefore, the burden for compliance checks is a bit more difficult than for transactions that are for in-state only sales. As Director Sled also noted, in a brick-and-mortar retail situation the sale occurs face-to-face whereas online cigar sales involve the product being transferred upon delivery.

After discussion, a motion was made by Mr. Brent Summerhill and seconded by Mr. Sam Stathakis to approve the proposed ATC Rules regarding online cigars sales and delivery. The motion passed with eight (8) yes votes.

WHOLESALE PERMIT APPLICATIONS

Chairman Proffitt presented three (3) new Wholesale Tobacco and Vapor product Permit applications to the Board for approval.

- **MRAR Inc. - Memphis, TN**
 - A motion was made by Dr. Patricia Knott to approve MRAR Inc. application and it was seconded by Dr. Shabbir Dharamsey. Motion passed with eight (8) yes votes.

- **Streamline Vape Co. LLC – Henderson, NV**
 - A motion was made by Mr. Sam Stathakis to approve Streamline Vape Co., LLC application and it was seconded by Dr. Shabbir Dharamsey. Motion passed with eight (8) yes votes.
- **SunFlora Inc. DBA Your CBD Store / SunMed – Palmetto, FL**
 - A motion was made by Dr. Brad Mayfield to approve Sunflora Inc. application and it was seconded by Dr. Shabbir Dharamsey. Motion passed with eight (8) yes votes.

NEW NON-WHOLESALE PERMITS ISSUED

- Director Greg Sled requested the Board members to review and approve the list of forty-eight (48) new permits (those permits other than wholesale permits) issued from May 2, 2022 through May 30, 2022.
- Mr. Brent Summerhill asked about the number of ATC permits issued in the State of Arkansas. Director Sled responded and stated that there are roughly 4,800 permits, which includes all permits (Manufacture, Wholesale and Retail). ATC Director Sled also noted that there are roughly 138 Wholesale permits in the State of Arkansas.
 - A motion was made to accept and approve the list of forty-eight (48) new permits issued by Dr. Shabbir Dharamsey and seconded by Mr. David Hendrix, Jr. The motion passed with eight (8) yes votes.

DEFAULT JUDGMENTS

- Attorney Will Olson presented the default judgement list to the board to review and approve.
- Dr. Shabbir Dharamsey asked Attorney Will Olson about the enforcement of default judgments. Attorney Will Olson noted that permittees in default cannot renew or apply for a permit if there are outstanding penalties. Further, ATC Director Greg Sled provided that if there is a Board Order and payment has not been made pursuant to the Board Order, ATC Agents can also pull the permit until payment is made.
 - A motion was made by Mr. David Hendrix, Jr. and seconded by Dr. Brad Mayfield to approve. The motion passed with eight (8) yes votes.

ACCEPTED OFFERS OF SETTLEMENT

- Director Greg Sled presented the Offers Accepted to the board to review and approve.
- Chairman Gary Proffitt asked about a particular case pertaining to the selling of single cigarettes. Director Sled explains general facts of the case, the maximum penalty, and the reasoning behind offered civil penalties.

- A motion was made by Mr. Sam Stathakis and seconded by Dr. Shabbir Dharamsey to approve. The motion passed with eight (8) yes votes.

ENFORCEMENT ACTIVITY

- Director Greg Sled introduced two (2) new hired ATC employees and welcomed them to our agency.
 - Sharee Devore - Administrative Analyst
 - Kyle King - Enforcement Agent - Central Arkansas
- Director Sled reported that the Rules of the Arkansas Tobacco Control Board were filed with the Secretary of State and will be effective on June 6, 2022.
- Director Sled reported for following results for compliance checks.
 - Feb - 32 / 325 = 9.85%
 - Mar - 47 / 447 = 10.50%
 - Apr - 61 / 585 = 10.43%
 - May - 35 / 367 = 9.54%
 - FY 2022 - 539 / 4768 = 11.30%

Results for Inspections for the month of May was 32 violations out of 152 inspections = 25.05%

- ATC Merchant Training Classes will be scheduled in North Little Rock on July 12th & 13th and in Batesville on July 19th & 20th.
- Permit Renewals started on May 1, 2022 and 3,045 out of 4894 (62%) have renewed at this time. Out of the 3,045 permits that have renewed, 2,313 (76%) have renewed online.

FDA ACTIVITY

- Deputy Director Ray Owens reported for the Month of May 2022, FDA Division agents completed 150 inspections with 13 potential violations being reported.
 - FDA Routine Inspections are minor checks where no previous violations exist or are old enough that a fresh inspection has been randomly generated.
- FDA Compliance Follow-Up Inspections for April resulted in 56 CFU Inspections with 2 potential violations.
 - FDA Compliance Follow-Up Inspections are checks with and without minors at locations where previous violations have occurred.

206 Total inspections were performed with 15 potential violations reported resulting in 7.28% violation rate.

- Deputy Director Ray Owens reported that the FDA Division hired a Russell Gray that will be joining the FDA Enforcement Agents on May 16, 2022. He will be working in the Northeast part of the state.

LEGAL UPDATE

- **Litigation Updates:**

- Attorney Will Olson presented to the Board that ATC currently has two (2) cases on administrative appeal in circuit. Briefing is due next Friday in the Stop N Buy case. The other case is in Pulaski County Circuit Court, where the Judge remanded the matter back to the Board for a new full hearing. This remanded matter will be before the Board shortly.

- **Legislation Updates:**

- Attorney Will Olson noted that the next legislative session is in January 2023 and that the agency is in the brainstorming phase of working on potential ATC-related legislation.

OPEN FORUM

- Chairman Gary Proffitt asked if there were any questions or comments from the Board members. Director Sled mentioned there was a question brought up at the last meeting regarding how the new rule changes will affect the agents. He said that hopefully ATC will be able to add more agents to be able to take on more responsibility that will come with the new rules being enforced.
- Chairman Gary Proffitt asked those in the public audience if there were any questions or comments. There were no questions or comments made at that time.

ADJOURNMENT

In closing, Chairman Gary Proffitt stated that the next ATC Board meeting is scheduled for July 14, 2022. A motion was made by Mr. Kerry Lott to adjourn and it was seconded by Mr. Brent Summerhill. It was approved with eight (8) yes votes. The meeting was adjourned.

Minutes prepared by:

Pat Dykes
Pat Dykes

Dated: June 3, 2022