

**ARKANSAS TOBACCO CONTROL RULES
PROMULGATED PURSUANT TO
ARK. CODE ANN. § 4-75-706, § 20-27-2108, and § 26-57-206**

SECTION I – GENERAL

Arkansas Tobacco Control (“Agency”)
Arkansas Tobacco Control Board (“Board”)

1.1 Meeting of Board. The Board shall meet at least two (2) times each year, time and place to be designated by the Chair of the Board in his/her official call of such meetings. However, additional regular, special, or emergency meetings may be held at the discretion of the Chair of the Board or at the written request of two (2) members of the Board.

1.2 Quorum. A majority of the members of the Board shall constitute a quorum. If a quorum is not present at the time of such called meeting, same may be adjourned to a later date to be designated by the Chair of the Board.

SECTION 2 – PERMIT APPLICATIONS - GENERALLY

2.1 Permit Necessary for Sale of Cigarettes or Other Tobacco Products. No wholesaler, retailer, vendor or other individual, partnership, corporation or other entity shall sell, barter, give away or otherwise distribute cigarettes, vapor products, alternative nicotine products, e-liquid products or other tobacco products in the State of Arkansas without first obtaining the appropriate permit or permits in accordance with the Arkansas Tobacco Products Tax Act of 1977, A.C.A. § 26-57-201 *et seq.*, and these Rules.

2.2 Permit Needed for Each Capacity. Any individual, partnership, corporation or other entity operating in more than one capacity shall obtain a permit for each capacity.

2.3 Current Address. All permit holders must keep a current address or the current address of an agent for service of process on file with the Agency. All correspondence and/or notices from the Agency or Board shall be sent to the address on file with Agency. All permit holders are to notify the Agency of any change in address and/or agent for service of process within thirty (30) days of said change.

2.4 Forms for Applications. All applications for permits, new or renewal, shall be completed on forms provided by the Agency.

2.5 Application to be Complete. No application, new or renewal, will be accepted or acted upon by the Board unless it is complete and accompanied by the appropriate payment as established by A.C.A. § 26-57-219.

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.

2.7 Posting of Permits. All permit holders are required to publicly display his/her permit so that all persons visiting the premises may readily see the permit. Vending machine permit holders are required to post their cigarette vending machine permit conspicuously on the front of the vending machine.

2.8 Records to be Provided. All records relating to the purchase or sale of any tobacco product, including, but not limited to all invoices and/or receipts relating to the sale or purchase of any tobacco products, of any permit holder shall be open to inspection by the Director of the Agency and any investigator/agent of the Agency. All such records shall be maintained by the permit holder for a period of at least three (3) years.

2.9 The term “invoice” as used in Ark. Code Ann. § 26-57-213 is defined as “documentation, contemporaneously made with the sale or purchase, sufficient to show an itemized list of the merchandise shipped, purchased or sold, with the quantity and prices charged.” For wholesale sales, the invoice must contain the name or other identifying information of the seller and the purchaser. For purchases by a retailer, the invoice and/or sales receipt must contain the name or other identifying information of the seller. For sales by a retailer to consumers, the invoice need not contain the name or other identifying information of the purchaser.

SECTION 3 –WHOLESALE PERMIT APPLICATIONS

3.1 Detailed Information to be Provided. Any application for a wholesale permit must be accompanied by a sworn affidavit showing whether the business is owned by an individual, partnership, or corporation or other entity. The application shall state the name, age and address of the applicant, if an individual; the name, age and address of each partner, if the applicant is a partnership; and the name, age and address of each member of the Board of Directors or other governing body and each officer and the managing agent, if the applicant is a partnership, corporation or an association. In addition, the application shall state the name and address of each person financially interested in the permitted business for which application is made, together with the nature of such interests, but if such applicant is a corporation, the applicant shall set forth only the name(s) and address(es) of all stockholders holding more than five percent (5%) interest in the permitted business. In addition, the same information may be required by the director of any manager, director, officer, or member retained by or having interests in the business. The application shall further provide a telephone number which must be listed in the name of the business seeking the application.

3.2 Wholesaler-in-Fact. Each applicant shall attest that the permittee shall be a wholesaler in fact, proof of which shall consist of an established place of business, the length of time for which

said office and/or warehouse has been rented, leased or owned, and the Federal Employer's Business Identification Number of each business.

3.3 Business Location. Each applicant must attach copies of the lease, rental or ownership agreement of all offices and/or warehouses and a photo of all buildings to be used for the storage of inventory or files. No building may be used to store inventory or files which contains personal living quarters which is accessible from the area proposed to be used as a building location.

3.4 Price List to be Kept. Each applicant must agree to maintain a list of prices for all tobacco products which will be sold, such price lists to be kept in the business office and made available to each customer, the Board, the Director, or an investigator of the Agency.

3.5 Proof of Financial Responsibility. Each applicant shall furnish proof of financial responsibility in the form of a Dunn & Bradstreet Report or such other financial statement(s) or document(s) acceptable to the Director. The Director may require financial statement made by a certified public accountant.

3.6 Change in Ownership. In the event there is a change in ownership of twenty five percent (25%) or more, the permit holder must resubmit the information required by Section 3.1, 3.3, 3.6 and 3.7. Said amended information shall be submitted to the Agency within 30 days of said change in ownership. If after review of the amended information, the Board determines that a permit would not have originally been granted to the legal entity had the original ownership and information been as reflected in the amended information, the Board shall have the authority to revoke any permit, after a hearing. This provision shall not apply to publicly traded corporations.

3.7 Publication of Application – New Application. Upon tentative approval of a new wholesale application by the Board staff, the applicant shall advertise its intentions to seek a permit in a newspaper of state-wide circulation. Said notice shall be placed on two (2) occasions, seven (7) days apart, using the form supplied by the Board. The date of the first publication shall be at least thirty (30) days prior to the meeting at which the Board shall consider the application. The Director of the Agency shall establish the date of the Board meeting at which the application shall be considered and the deadline for the filing of objections to the issuance of the permits. The applicant shall provide copies of said notices, along with proof of publication, to the Director fifteen (15) days prior to the scheduled meeting.

SECTION 4 – RETAIL PERMIT HOLDERS

4.1 Server Awareness Forms. It shall be the obligation of each retail permit holder to obtain from every employee, permittee or owner who may or does sell cigarettes and tobacco products, upon commencement of such employment, a signed acknowledgement that he/she has read and understands the content of a form entitled “Tobacco Server Awareness Form”, such form being provided at the time of issuance of any permit by the Director of the Tobacco Control Board. The Tobacco Server Awareness Form shall set forth pertinent rules and laws governing the sale of tobacco products and other related information as determined appropriate by the Director. Executed server awareness forms or copies thereof shall be maintained at each permitted retail

location and shall be available for inspection upon request by any agent of Arkansas Tobacco Control during normal business hours. Failure to have executed server awareness forms available for inspection shall be deemed a violation of this rule.

4.2 Prohibition on Loose Cigarette Sales. The sale of individual cigarettes or "loosies" is prohibited. Individual cigarettes or "loosies" are defined as any cigarette not contained in its original, unopened pack.

4.3 Online Cigar Sales. Pursuant to A.C.A. § 26-57-203(27)(B), a retailer may sell cigars online to a buyer who is twenty-one (21) years of age or older, whether that buyer is inside or outside the state of Arkansas, when that retailer (1) has a physical presence in the state of Arkansas and when that retailer (2) purchases cigars from a permitted wholesaler.

“Cigar” or “Cigars” as used in this rule means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco, other than any roll of tobacco that is a cigarette, as defined by Ark. Code Ann. § 26-57-260(4)(A)–(C).

To “sell cigars online” means a sale of, an advertisement of, a solicitation to sell, a purchase of, or an offer to purchase cigars to consumers who submit orders all or in part online through the internet. “Sale” or “Sell” has the same meaning as provided in A.C.A. § 26-57-203(28)(A).

4.4 Permit Required. Prior to making an online sale for delivery and prior to shipping cigars in connection with any online sales, a person must obtain and maintain a permit with the Arkansas Tobacco Control.

4.5 Requirements for accepting order for delivery sale. When accepting an order for a delivery of an online cigar sale from a buyer, the retailer must obtain the following information from the buyer placing the order:

- (a) A certification from the buyer documenting that the buyer:
 - (i) Is of legal age to purchase tobacco products in the State of Arkansas;
 - (ii) Understands that providing false information may be a violation of law; and
 - (iii) Understands that it is a violation of law to purchase cigars for subsequent resale or for delivery to persons who are under the legal age to purchase cigars.
- (b) The name of the person making the order;
- (c) The address where delivery is to occur;
- (d) The phone number of the person making the order;
- (e) The date of birth for the person making the order; and
- (f) The payment information.

4.6 Requirements for shipping a delivery sale. When shipping an order of an online sale from a buyer, the retailer must undertake the following prior to shipping:

(a) The retailer must clearly mark the outside of the package of cigars to be shipped “Adult signature required.”

(b) The retailer must utilize a delivery service that imposes the following requirements:

(i) Someone twenty-one (21) years of age or older must sign for the delivery;

and

(ii) The person signing for the delivery must show valid government-issued identification that contains a photograph of the person signing for the delivery and indicates that the person signing for the delivery is twenty-one (21) years of age or older and resides at the delivery address.

(c) The retailer must provide delivery instructions that clearly indicate the requirements of this Subsection 4.6 and must declare that state law requires compliance with the requirements.

4.7 Common Carriers. This section may not be construed as imposing liability upon any common carrier, or officers or employees of the common carrier, when acting within the scope of business of the common carrier and when otherwise acting in compliance with Arkansas law, including, but not limited to, the provisions of A.C.A. § 26-57-230.

4.8 Civil Penalties. The board may levy a civil penalty in an amount not to exceed five thousand dollars (\$5,000) for each violation of this section, pursuant to A.C.A. § 26-57-255, in addition to other civil penalties, suspensions or revocations as authorized by Arkansas Law.

4.9 Collection of Taxes. A retailer selling cigars online pursuant to this rule is responsible for the applicable sales taxes and excise taxes.

SECTION 5 - OBJECTIONS TO THE ISSUANCE OF PERMITS

5.1 Written Objections to be Made. Pursuant to A.C.A. §26-57-256(a)(6), the Director shall receive written objections to the issuance of new permits. All objections must state the nature of the relevant facts and must be received by the Director on or prior to the deadline established by the Director and published by the applicant pursuant to Section 3.1 of these Rules.

5.2 Public Hearing to be Held After Receipt of Three Objections. If the Director receives the petition of three (3) interested parties alleging that facts relevant to the issuance of the permit exists and objecting to the issuance of the permit, the Board shall conduct a public hearing to receive and consider such relevant testimony and evidence.

5.3 Applicant to Publish Notice of Hearing. In the event that a public hearing is conducted by the Board, the Director shall establish the time and date of the hearing and notify the applicant. The applicant shall then publish notice of the hearing in a newspaper of state-wide circulation. Said notice shall be placed on two occasions, seven days apart, using the form supplied by the

Board. The date of the first publication shall be at least 15 days prior to the public meeting. The applicant shall provide copies of said notices, along with proof of publication, to the director prior to the scheduled meeting.

SECTION 6 - EXPIRATION OF PERMITS - RENEWALS

6.1 Permits to Expire on June 30. All permits and licenses shall expire on June 30 of each year. Only those applications received by this deadline shall be considered timely. The responsibility of timely renewal is placed entirely upon the permit holder, and shall not be transferred to any employee, firm, agent, or other third party, including the postal service. All permit holders who desire to retain their permits must apply for renewal on the forms provided by the Board.

6.2 Expired Permit. Each permit not renewed on or before June 30 shall expire. The holder of an expired permit must, after sixty (60) days (September 1), submit a new application and pay all late fees before receiving a new permit. The holder of the expired permit shall not be permitted to purchase, sell, barter, give away or otherwise distribute cigarettes or other tobacco products in the State of Arkansas during the time he is not the holder of a valid, unexpired permit. However, this provision shall not bar the holder of an expired permit to return cigarettes or other tobacco products to the wholesaler.

SECTION 7 - FEES

7.1 Cash Not Accepted for Payment of Fees or Permits. Payments for all fees or permits are to be made by check, draft or money order, or credit card. No cash money will be accepted by the employees or members of the Tobacco Control Board for any purpose.

7.2 No Payments Accepted by Agents. No agent of the Tobacco Control will take any payments in the field for new or renewal permits, fines or any other matter. All payments are to be mailed or delivered to the Tobacco Control Board as set out in Section 7.1.

7.3 Permit Fee Schedule. The following is the Schedule for all Permit Fees:

RETAIL CIGARETTE & TOBACCO PERMITS:

- 1. RC-RETAIL PERMIT \$100.00
(Tobacco Products, Vapor Products,
Alternative Nicotine Products, or E-Liquid Products)

- 2. RV-RETAIL VAPOR PRODUCT AND E-LIQUID ONLY PERMIT \$50.00

**WHOLESALE & WHOLESALER'S
SALESPERSON PERMITS:**

- 1. WP-WHOLESALE PERMIT \$1,000.00
(Tobacco Products, Vapor Products,
Alternative Nicotine Products, or E-Liquid Products)

3. WS-WHOLESALE'S SALESPERSON PERMIT \$25.00

VENDOR & VENDING MACHINE PERMITS:

1. VS-VENDING MACHINE PERMIT (per machine) \$10.00

2. GV-VENDOR PERMIT \$100.00

**MANUFACTURER & MANUFACTURER'S
SALESPERSON PERMIT:**

1. MV-MANUFACTURER VAPOR PRODUCT & E-LIQUID PRODUCT ONLY PERMIT \$500.00

2. MT-MANUFACTURER TOBACCO PRODUCTS &
ALTERNATIVE NICOTINE PRODUCTS ONLY PERMIT \$500.00

- Manufacturers or importers who deal solely in cigars may submit a copy of their current federal tobacco import license or federal manufacturer's license to Arkansas Tobacco Control when applying for a Manufacturer Tobacco Products and Alternative Nicotine Products Only Permit to receive the permit at no cost.

3. MC-MANUFACTURER CIGARETTE ONLY PERMIT \$500.00

4. MS-MANUFACTURER'S SALESEPERSON PERMIT \$25.00

VAPOR AND E-LIQUID PRODUCT EXCLUSIVE PERMIT:

1. VAPOR PRODUCT AND E-LIQUID PRODUCT EXCLUSIVE PERMIT \$1,000.00
(Manufacturer, Wholesaler, and Retailer)

SPECIAL EVENT ONE TIME PERMIT:

1. SPECIAL EVENT ONE-TIME PERMIT \$5.00

DUPLICATE PERMIT:

1. DUPLICATE PERMIT REQUEST \$5.00

SECTION 8 - CIGARETTE VENDING MACHINES

8.1 Location of Vending Machines. New or renewal applications for General Tobacco Products Vending Permit (vendor) license shall file with the Board a notification listing the number of vending machines operated and the physical location of each machine. In the event the location of a machine is changed, the vendor shall file with the Board, within 30 days of the change in location, a notification of the change in location, stating the former location of the machine and the new location. In the event of the addition of a machine not previously listed on the filing of

the vendor, the vendor shall file a notification listing the location of such machine(s) within 30 days of the addition.

8.2 List of Locations of Vending Machines Upon Issuance or Renewal. Upon the issuance or renewal of a cigarette vending machine permit, the permittee shall furnish the Director of the Tobacco Control Board a complete list of vending machine locations which list shall include the name of the business where the machine is operating and along with the physical address where the machine is located.

8.3 Proof of Bond. Before a permittee may renew a cigarette vending machine permit, he/she shall provide the Director of the Tobacco Control Board with proof that the bond is still in force and effect with either a reinstatement notice or letter from the bond company or insurance company providing such coverage and stating the date of termination.

SECTION 9 - REBATES AND CONCESSIONS

9.1 Definition.

A. **Rebate.** Pursuant to A.C.A. § 4-75-702, “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.

B. **Concession.** “Concession” has the same meaning as “Rebate.”

C. **Cost to Wholesaler.** “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.

9.2 Unlawful Rebate. It is unlawful for any wholesaler, retailer, or salesperson to offer a rebate in price, to give a rebate in price, to offer a concession of any kind, or to give a concession of any kind or nature whatsoever in connection with the sale of cigarettes with intent to injure competitors or destroy or substantially lessen competition.

9.3 Lawful Rebate. A wholesaler may give a rebate (1) if the rebate is paid by check or electronic direct deposit and (2) does not result in a sale at less than cost to the wholesaler according to A.C.A. § 4-75-702(5)(A), less discounts that are received by the wholesaler from the manufacturer.

9.4 Unlawful Retailer Inducement. It is unlawful for any retailer to induce or attempt to induce or to procure or attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler.

9.5 Penalties For Failure To Comply - Any permit holder who violates the provisions of the ATC Rules shall be subjected to all sanctions set forth in A.C.A. § 26-57-201, et seq. (the Arkansas Tobacco Products Tax Act) and these Rules, which may include the suspension or revocation of any Wholesaler's or Retailer's permit or license.

SECTION 10 - HEARING PROCEDURES

10.1 Determination of Need for Hearing. If upon a complaint filed or upon its own motion, the Board determines that a hearing is necessary, the Board shall instruct the Director and/or the Board's legal counsel to issue a Notice of Hearing.

10.2 Administrative Procedures Act. All hearings shall be held in accordance with the Administrative Procedures Act, A.C.A. 25-15-201 et seq.

10.3 Notice of Hearing. The Notice of Hearing shall be served upon the permit holder by mailing the same to the address on file with the Agency. Service shall be by any means allowable by the Arkansas Rules of Civil Procedure as well as by first class mail. The failure of a permit holder to receive the Notice of Hearing, if sent to the address on file with the Agency, shall not constitute a failure to serve the permit holder. The Notice of Hearing shall be mailed least 20 days prior to the hearing. This 20-day requirement may be waived by the permit holder.

SECTION 11 - GROUNDS FOR REVOCATION, SUSPENSION, NONRENEWAL OF PERMITS OR ISSUANCE OF A CIVIL PENALTY

11.1 Grounds for Board Action. The following acts on the part of any permit holder shall be deemed by the Board to be grounds for revocation, suspension, non-renewal of a license or permit or issuance of a civil penalty.

- A. The violation of any of the provisions of these Rules.
- B. The violation of any provision of the Arkansas Tobacco Products Tax Act (A.C.A. § 26-57-201 et seq.), the Unfair Cigarette Sales Act (A.C.A. § 4-75-701 et seq.), A.C.A. § 5-27-227 (providing minors with tobacco products and cigarette papers - placement of tobacco vending machines), [the grounds for the revocation, suspension, non-renewal or issuance of a civil penalty for violation of Ark. Code Ann. § 5-27-227(a) are more fully set out in Ark. Code Ann. § 26-57-257(r)], any Federal Law or Regulation in connection with the sale or distribution of cigarettes or tobacco products, any Arkansas Law or Regulation in connection with the sale or distribution of cigarettes or tobacco products.
- C. The assistance of another individual to violate any of the provisions of Rules and Regulations of the Board or to violate any provision of the Arkansas Tobacco Products

Tax Act (A.C.A. § 26-57-201 et seq.), the Unfair Cigarette Sales Act (A.C.A. § 4-75-701 et seq.), any Federal Law or Regulation in connection with the sale or distribution of cigarettes or tobacco products, any Arkansas Law or Regulation in connection with the sale or distribution of cigarettes or tobacco products.

SECTION 12 – ENFORCEMENT OF ARK. CODE ANN. § 5-27-227

12.1 Offenses by Non-Permittee. If a complaint alleging the violation of Ark. Code Ann. § 527-227 is received by the Agency, and the Agency, at its discretion, determines that there are reasonable grounds to believe that a violation has occurred, the Agency may direct that a Notice of Hearing be issued to the [respondent] for the appropriate allegation.

12.2 Information to be Given to the Board – Timeliness of Information. In order for the Agency to comply with notice requirements of Arkansas law, alleged violations of Ark. Code Ann. § 527-227 reported to the Agency must contain, at a minimum, the following: the date and time of the alleged violation, either the name of the person making such alleged sale or information reasonably necessary to determine the location in the store of the person allegedly making the sale. Such information should include, where appropriate, the cash register number, physical location of the sale in the store, and if possible the lane or aisle number. If a cash register receipt was given for the sale, it should be included with the information.

A. Notice of the alleged violation must be given to the alleged violator within ten (10) days of the alleged event. Therefore, information as to an alleged violation should be given to the Board as soon as possible.

12.3 Training of Individuals or Groups Conducting Compliance Checks. Use of Board Approved Forms:

A. In order to assure compliance with Arkansas law, all individuals or groups authorized to conduct compliance checks under Ark. Code Ann. § 5-27-227(d)(5) [excluding individuals and groups authorized to conduct compliance checks pursuant to 5-27-227(d)(1) through 5-27-227(d)(4)] shall be trained by an authorized agent of the Board, at a course or seminar approved by the Board. The director shall from time to time, as is necessary, schedule courses or seminars to instruct those groups or individuals interested in conducting compliance checks.

B. All individuals or groups authorized to conduct compliance checks under Ark. Code Ann. § 5-27-227(d)(5) [excluding individuals and groups authorized to conduct compliance checks pursuant to 5-27-227(d)(1) through 5-27-227(d)(4)] shall use the forms approved by the Board to compile and report information on compliance checks.

C. Notwithstanding any provision of these Rules, any retail permit holder is entitled to an affirmative defense, and no penalty will be imposed upon the retail permit holder, if the retail permit holder can establish that, prior to the date of the violation, the retail permit holder, or his/her agent or employee, furnishing the tobacco in any form or cigarette papers reasonably had previously relied upon proof of age which identified the person receiving the tobacco in any form

or cigarette papers as being eighteen (18) years of age or older. Proof of age means any document issued by a governmental agency containing a description of the person, such person's photograph, or both, and giving such person's date of birth and includes, without being limited to, a passport, military identification card, or driver's license.

SECTION 13 – ESTABLISHMENT OF A SPECIAL FUND

13.1 Maintaining Adequate Funding. In order to maintain adequate funding within the Tobacco Control Board to provide all necessary copying and miscellaneous legal costs, and to ensure the maintenance of Regulation Books in sufficient quantities within existing budgetary constraints, it is necessary that a fee be charged for Regulation Books. Further, it is necessary that a Tobacco Control Board Fund be established into which the fees charged for the books will be deposited. These revenues may be used for the purpose of printing additional books, official publications, documents, pleadings, or postage costs, as well as for paying any necessary filing fees or costs on any court appeals filed by the Tobacco Control Board.

13.2 Charge for Rules & Regulations Book. A fee of ten dollars (\$10.00) shall be charged for each Regulation Book, and such revenues shall be deposited in the Special Tobacco Control Board Fund, to be established pursuant to this Regulation, and shall be used for the purposes stated in Section 13.1, as such payment is deemed necessary and proper by the Director.

13.3 Charge for Copies Made. The Tobacco Control Board shall be entitled to recover forty cents (\$.40) per page for each copy of any files, records, or transcripts. Any copies of Tobacco Control Board files, records, or transcripts shall be paid for at the rates noted above. All monies received by the Tobacco Control Board pursuant to the above provisions shall be deposited to the special Tobacco Control Board Fund.

SECTION 14 - PAYMENT OF FINES

14.1 Due Date for Payment of Fines (Accepted Offers of Settlement) – Fines issued to and accepted by a permit holder or other person or entity shall be paid no later than thirty (30) days from the date the Board approves said acceptance unless other written arrangements are made and approved by the Director.

14.2 Due Date for Payment of Fines (Hearings or Defaults) – Fines issued to a permit holder or other person or entity after a hearing or a finding that said permit holder or other person or entity is in default, shall be paid no later than fifteen (15) days after said permit holder's or other person or entity's time for filing an appeal to Circuit Court has run. Due date for payment of fines after an appeal is taken is thirty (30) days from the date of entry of a final order.

14.3 Penalty for Non-Payment (Permit Holders) – If a permit holder fails to pay their fine when due and has either failed to file a timely appeal to Circuit Court or more than thirty (30) days has passed since the entry of a final order on appeal, the Director may immediately and without further notice temporarily suspend the permit holder's retail, vending or wholesale cigarette and tobacco

permit until a hearing is held to show cause why the permit holder should not be found in contempt of the Board's Orders and their suspension continued for a period of time determined by the board, be fined up to \$1000.00, have their permit suspended or revoked or any combination thereof.

14.4 Penalty for Non-Payment (Non-Permit Holders) – If a person or entity other than a permit holder fails to pay their fine when due and has either failed to file a timely appeal to Circuit Court or more than thirty (30) days has passed since the entry of a final order on appeal, the Director may immediately and without further notice confiscate or seal any and all cigarettes and other tobacco products on said person or entity's business premises until a hearing is held to show cause why the person or entity should not be found in contempt of the Board's Orders and their confiscated inventory be destroyed, be fined up to \$1000.00 or any combination thereof.

SECTION 15 – UNFAIR CIGARETTE SALES

15.1 WHOLESALEERS' COST OF DOING BUSINESS

A. COST OF DOING BUSINESS

1. The cost of doing business is presumed to be four percent (4%) of the basic cost of cigarettes to the wholesaler unless a different cost of doing business is determined by a cost study conducted by the director.
2. Unless approved for a lower cost of doing business or meeting competition, as provided by this regulation and the Unfair Cigarette Sales Act, or falling within the statutory exceptions in A.C.A. §4-75-703, the wholesaler may not advertise, offer to sell, or sell cigarettes to a retailer at less than the basic cost of the cigarettes involved to the wholesaler, plus the wholesaler's statutorily presumed four percent (4%) cost of doing business, if the wholesaler does so with the intent to injure competitors or destroy or substantially lessen competition. Evidence of advertisement, offering to sell, or sale of cigarettes at a price less than the cost of the cigarettes involved to the wholesaler, plus the wholesaler's cost of doing business shall be prima facie evidence of intent to injure competitors and destroy or substantially lessen competition.

B. WHEN TO FILE APPLICATION

1. A wholesaler who wishes to advertise, offer for sale, or sell at less than four percent (4%) presumed cost of doing business shall submit an application to the director, for approval by the Board, at least forty-five (45) days before the desired effective date;
2. Or other times as may be authorized by the director.

C. APPLICATION TO CONTAIN CERTAIN INFORMATION

1. An application for permission to advertise, offer for sale, or sell at less than four percent (4%) presumed cost of doing business shall contain;
 - a. A summary of expenses associated with the business, on a form to be provided by the director, with the cigarette portion of the business separately listed, and using the information set forth in the most recently filed federal income tax return.
 - b. The certificate statement signed by the owner, partner, or a responsible corporate officer indicating that the summary of expenses as contained on the form required by § C(1)(a) of this Rule is true and accurate;
 - c. A statement signed by a certified public accountant indicating the CPA has reviewed the information provided and that it accurately reflects the information shown in all material respects;
 - d. A copy of the most recently filed federal income tax return form with all associated schedules and attachments; and
 - e. Any other information requested by the director, as may be necessary to review the application.
2. If the wholesaler engages the services of an independent accounting firm, the statement provided under § C(1)(c) of this regulation shall be signed by a CPA associated with that firm.

D. REVIEW AND DETERMINATION

The director shall review and evaluate the information provided by the wholesaler and shall make a recommendation to the Board regarding the approval of the wholesaler's application to sell at less than the statutory presumed cost of doing business. The director shall inform the applicant of his recommendation prior to submitting the application, and the director's recommendation, to the board. The director shall notify the wholesaler of the final action on the application, and, if approved, the specified percentage cost of doing business approved shall remain in effect until the next application and approval or until withdrawn by the director. If a person with permission to sell at less than statutory presumed cost of doing business fails to submit a new application by May 15, then the permission previously given shall be automatically withdrawn on July 1.

E. MEETING COMPETITION

A wholesaler may advertise, offer for sale, or sell at a lower cost of doing business while meeting competition. The following criteria shall be considered when meeting competition.

1. The competitor shall have been approved for a lower cost of doing business in accordance with this regulation; or

2. The competitor shall have sold, or made a definite bonafide advertisement or offer to sell cigarettes at a lower price to a specific retailer; and
3. A written offer to sell is considered prima facie evidence of competition at a particular retailer.

F. REMEDY

Not with standing approval by the director and the board of a lower cost of doing business, an effected party who claims to be injured may pursue remedies in a court of competent jurisdiction as provided by Ark. Code Ann. § 4-75-713.

15.2 **RETAILERS' COST OF DOING BUSINESS**

A. COST OF DOING BUSINESS

1. The cost of doing business is presumed to be seven and one/half percent (7.5%) of the basic cost of cigarettes to the retailer, unless a different cost of doing business is determined by a cost study conducted by the director.
2. Unless approved for a lower cost of doing business or meeting competition, as provided by this regulation and the Unfair Cigarette Sales Act, or falling within the statutory exceptions in A.C.A. §4-75-703, the retailer may not advertise, offer to sell, or sell cigarettes to a retail consumer at less than the basic cost of the cigarettes involved to the retailer plus the retailer's statutorily presumed seven and one/half percent (7.5%) presumed cost of doing business, if the retailer does so with the intent to injure competitors or destroy or substantially lessen competition. Evidence of advertisement, offering to sell, or sale of cigarettes at a price less than the cost of the cigarettes involved to the retailer, plus the retailer's cost of doing business shall be prima facie evidence of intent to injure competitors and destroy or substantially lessen competition.

B. WHEN TO FILE APPLICATION

1. A retailer who wishes to advertise, offer for sale, or sell at less than seven and one/half percent (7.5%) presumed cost of doing business shall submit an application to the director for approval by the Board, at least forty five (45) days before the desired effective date;
2. Or other times as may be authorized by the director.

C. APPLICATION TO CONTAIN CERTAIN INFORMATION

1. An application for permission to advertise, offer for sale, or sell at less than seven and one-half percent (7.5%) presumed cost of doing business shall contain;
 - a. A summary of expenses associated with the business, on a form to be provided by the director, with the cigarette portion of the business separately listed, and using the information set forth in the most recently filed federal income tax return.
 - b. The certificate statement signed by the owner, partner, or a responsible corporate officer indicating that the summary of expenses as contained on the form required by Section C(1)(a) of this Rule is true and accurate;
 - c. A statement signed by a certified public accountant indicating the CPA has reviewed the information provided and that it accurately reflects the information shown in all material respects;
 - d. A copy of the most recently filed federal income tax return form with all associated schedules and attachments; and
 - e. Any other information requested by the director, as may be necessary to review the application.
2. If the retailer engages the services of an independent accounting firm, the statement provided under § C(1)(c) of this regulation shall be signed by a CPA associated with that firm.

D. REVIEW AND DETERMINATION

The director shall review and evaluate the information provided by the retailer and shall make a recommendation to the board regarding the approval of the retailer's application to sell at less than the statutory presumed cost of doing business. The director shall inform the applicant of his recommendation prior to submitting the application, and the director's recommendation, to the board. The director shall notify the retailer of the final action on the application, and, if approved, the specified percentage cost of doing business approved shall remain in effect until the next application and approval or until withdrawn by the director. If a person with permission to sell at less than statutory presumed cost of doing business fails to submit a new application by May 15, then the permission previously given shall be automatically withdrawn on July 1.

E. MEETING COMPETITION

A retailer who has not be approved for a lower cost of doing business may advertise, offer for sale, or sell at a lower cost while meeting competition. The following criteria shall be considered when meeting competition:

1. The competitor shall have been approved for a lower cost of doing business in accordance with this regulation; or
2. The competitor shall have sold, or made a definite bonafide advertisement or offer to sell, cigarettes at a lower price to a specific individual; and
3. A written offer to sell is considered prima facie evidence of competition to a particular individual.

F. REMEDY

Not with standing approval by the director and the board of a lower cost of doing business, an effected party who claims to be injured may pursue remedies in a court of competent jurisdiction as provided by Ark. Code Ann. § 4-75-713.

15.3 **COUPONS AND MANUFACTURER PROMOTIONAL ALLOWANCES**

A. APPLICATION OF MANUFACTURER PROMOTIONAL ALLOWANCES

For purposes of Ark. Code Ann. § 4-75-709, a manufacturer promotional allowance for a particular brand style of cigarette may only be passed on to the purchaser by the wholesaler or retailer in a transaction involving that particular brand style of cigarette. A wholesaler or retailer may not apply manufacturer promotional allowances in a sale involving a brand style of cigarette other than the particular brand style of cigarette for which that manufacturer promotional allowance was given by the manufacturer.

B. NO ACCRUAL OF MANUFACTURER PROMOTIONAL ALLOWANCES

For purposes of Ark. Code Ann. § 4-75-709, manufacturer promotional allowances may not be accrued and applied in the aggregate, but must be applied only on the same gross or pro rata basis as they are provided by the manufacturer. For example, if a manufacturer provides a manufacturer promotional allowance of twenty cents per carton of a particular brand style, that manufacturer promotional allowance may only be passed on to the purchaser by the Wholesaler at the rate of twenty cents per carton, or a pro rata portion thereof per pack from the carton, for the particular brand style of cigarette for which it is provided by the manufacturer.

SECTION 16 – ADVISORY OPINIONS

16.1 Issuance of Advisory Opinions. To the extent any Wholesaler or Retailer has questions concerning the price at which the Wholesaler or Retailer may legally sell cigarettes under Ark. Code Ann. §§ 4-75-701 *et seq.* or whether an act constitutes an unlawful Rebate or an unlawful Concession, the Wholesaler or Retailer may submit a written request to the Director for an advisory opinion. The written request should include a recitation of all facts relevant to the subject matter of the inquiry. The Director shall present the written request to the Board within forty-five (45) days of receipt thereof, unless good cause requires a longer period, along with the Director's

proposed response to the request. The Board shall approve, modify or reject the Director's proposed response within thirty (30) days of receipt thereof from the Director, unless good cause requires a longer period. The Board may also issue advisory opinions on its own initiative if it determines that the subject of the opinion is of such public concern that an advisory opinion would benefit the public. Neither the Director nor the staff of the Board shall provide oral or written advisory opinions concerning the price at which the Wholesaler or Retailer may legally sell cigarettes under Ark. Code Ann. §§ 4-75-701 *et seq.* or whether an act constitutes an unlawful Rebate or an unlawful Concession in any manner other than that authorized by these Rules.

16.2 Advisory Opinions Approved by the Board. No advisory opinion prepared under this Rule by the Director, the Board's staff or counsel, whether in draft or final form, shall be valid, official or of any effect unless and until it has been approved by a vote of a majority of a quorum of the Board. The Director's response to a request for an advisory opinion shall be prepared by the Director in consultation with the Board's legal counsel, as appropriate, and presented by the Director to the Board for consideration.

16.3 Form of Advisory Opinions. Advisory opinions shall set forth the facts upon which the opinion is based, and shall address only whether an intended, future course of conduct violates any law or rule within the jurisdiction of the Board. The opinion shall interpret the applicable law or rule as applied to the facts presented, and shall not address the legality of any past or present conduct. The identity of the requesting person shall be disclosed in the opinion. If the individual facts and circumstances provided are insufficient in detail to enable the Board to render an advisory opinion, the Board shall request supplementary information from the requesting individual to enable the Board to render such opinion. If such supplementary information is still insufficient or is not provided, the Board shall so state and shall not render an advisory opinion based upon what it considers to be insufficient detail.

16.4 Records. The Director shall provide a copy of each advisory opinion to the requesting party and to each member of the Board. The Director shall keep the original opinion in a permanent file maintained for that purpose, along with a copy of the original request for the advisory opinion and any information or documents provided to the Board by the requesting party. Copies of all documents considered by the Board, the staff or counsel in the drafting or rendering of an advisory opinion shall be retained by the Director and kept in the file for that particular advisory opinion. All files maintained for advisory opinions issued by the Board shall be made available for public inspection upon request, subject to the protections provided by the Arkansas Freedom of Information Act, Ark. Code Ann. § 25-19-105(b)(9)(A).

16.5 Effect of Opinions. The Board may reconsider, withdraw, or amend prior opinions upon request of a citizen, or on its own motion, by a majority vote of a quorum of the Board. In such event, written notice of the change shall be mailed to the original requesting party at the last address for that party provided to the Board.

SECTION 17 – TOBACCO FORFEITURE

17.1 Section 17 is promulgated pursuant to A.C.A. §26-57-247(j)(6).

17.2 For purposes of forfeiture tracking, each law enforcement agency seizing property pursuant to A.C.A. §26-57-247 shall be assigned a unique numeric identifier.

17.3 FORM ATC-C10 is hereby adopted as standardized confiscation report form to be used by all law enforcement agencies when forfeitable property is confiscated pursuant to A.C.A. §2657-247 as follows:

**ARKANSAS TOBACCO CONTROL
CONFISCATION REPORT**

Report No. _____
(assigned by ATC)

Date & Time of seizure: _____

County of seizure: _____

Name & Address of persons from whom the property was seized:

Seizing Officer: _____

REASON OR BASIS FOR SEIZURE: (Check all applicable)

- VEHICLE (or other conveyances) used or intended for use to transport untaxed tobacco product.
- MONEY furnished or intended to be furnished in exchange for untaxed tobacco product or profits and proceeds traceable to such exchange or found in close proximity to a forfeitable tobacco product or a forfeitable record of an importation of a tobacco product, or used to facilitate a criminal violation of the Tobacco Products Tax Act of 1977 or the Unfair Cigarette Sales Act.
- FIREARMS furnished or intended to be furnished in exchange for a tobacco product in violation of the Tobacco Products Tax Act of 1977 OR explain other basis for seizure (e.g. stolen firearm, felon in possession, etc...): _____

_____ OTHER

PROPERTY seized and basis for seizure:

DESCRIPTION AND ESTIMATED VALUE OF PROPERTY SEIZED:

(must contain serial and model numbers, if applicable, must contain odometer or hour meter if vehicle or equipment)

PROPERTY SEIZED WILL BE HELD AT THE FOLLOWING LOCATION(S).

The undersigned officer states that he/she is the "seizing officer" and that this report is true and complete.

Signature of seizing officer

The undersigned hereby states that he/she is the person(s) from whom the above property was seized and that his/her correct mailing address is given below.

Signature
Printed name & mailing address:

In the event that a party refuses to sign, the following must be completed:

The undersigned additional law enforcement officer hereby states that the party from whom the property was seized refused to sign this report and I hereby place my signature attesting to such refusal.

Signature of secondary officer

The undersigned agent hereby certifies that he has sent a copy of this report to the Prosecuting Attorney and has obtained and is maintaining a copy of this report that has been acknowledged as being received by: _____ and further certifies that he has sent a copy of the foregoing to the Arkansas Tobacco Control Director on this ____ day of _____, 20____.

Signature of seizing officer

The Prosecuting Attorney's Office acknowledges receipt of a copy of the foregoing on this ____ day of _____, 20____.
(must be signed by the Prosecuting Attorney or deputy prosecuting attorney.)

Signature of PA

FORM ATC-C10 (8/2010)

17.4 A report number for each seizure shall be assigned by ATC and recorded on the FORM ATC-C10 that will be completed by the seizing law enforcement agency.

17.5 The report number shall consist of the calendar year, the LEA numeric identifier, and the sequential confiscation number for that calendar year. (e.g. 2010001001)

SECTION 18 – SAVINGS CLAUSE

18.1 If any provision of these rules should be held invalid for any reason, the remaining provisions of these regulations shall not be affected thereby and shall remain in full force and effect.

SECTION 19 – EFFECTIVE DATE

19.1 These modifications to the Rules of the Arkansas Tobacco Control Board shall become effective November 15, 2010.

SECTION 20 – MODIFICATION OF RULES

20.1 These Rules may be modified or changed from time to time in accordance with the Administrative Procedures Act.