

**RULES AND REGULATIONS
OF THE ARKANSAS TOBACCO CONTROL BOARD
PROMULGATED PURSUANT TO ARK. CODE ANN. § 26-57-256**

SECTION I – GENERAL

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

SECTION 2 – PERMIT APPLICATIONS - GENERALLY

2.1 Permit Necessary for sale of Cigarettes or Tobacco Products - No wholesaler, retailer, vendor or other individual, partnership, corporation or other entity shall sell, barter, give away or otherwise distribute tobacco products or cigarettes in the State of Arkansas without first obtaining the appropriate permit or permits in accordance with A.C.A. § 26-57-201 et seq. and these rules and regulations.

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 - It shall be the obligation of all permit holders to keep on file with the Board the current address or the current address of an agent for service of process. All correspondence and/or notices from the Board shall be sent to the address on file with the Board. All permit holders are to notify the Board of any change in address and/or agent for service of process within 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 Arkansas Tobacco Control Board (the “Board.”)

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 privilege tax as established by A.C.A. § 26-57-219.

2.6 Posting of Permits – Each and every permit holder shall be required, 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 so that all persons visiting the premises may readily see the permit.

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

The term “invoice” as used in Ark. Code Ann. § 26-57-213 is defined as being 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 purchaser. For purchases by a retailer, the invoice 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 – APPLICATION FOR WHOLESALE PERMIT (NEW)

3.1 Detailed Information to be Provided - Any application for a wholesaler 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 and/or is 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 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 of the Board, or an investigator for the Board.

3.5 Character of Applicant - 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.

3.6 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) acceptable to the Director. The Director may require a financial statement made by a certified public accountant.

3.7 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 Director of the Board 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.

3.8 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 Board 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.

3.9 Sales by Wholesalers - 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 Purchases by Wholesalers - 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)

SECTION 4 –RETAIL SERVER AWARENESS

4.1 Server Awareness – It shall be the obligation of each retail permit holder to obtain from every employee who may or does sell cigarettes and tobacco products, upon commencement of such employment, a signed acknowledgement that he or 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 regulations and laws governing the sale of tobacco products and other related information as determined appropriate by the Director.

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 of the Board shall receive written objections to the issuance of new permits. All objections 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 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 Objections Must State Relevant Facts - All petitions and objections must state the nature of the relevant facts that are alleged.

5.4 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 tobacco products or cigarettes 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 tobacco products or cigarettes 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. 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 Board 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. WEEKLY GROSS SALES LESS THAN \$5,000	\$20.00
2. WEEKLY GROSS SALES BETWEEN \$5,000 & \$15,000	\$30.00
3. WEEKLY GROSS SALES IN EXCESS OF \$15,000	\$50.00

WHOLESALE CIGARETTE, TOBACCO & SALES REPRESENTATIVES PERMITS:

1. WHOLESALE CIGARETTE PERMIT	\$500.00
2. WHOLESALE TOBACCO PERMIT	\$500.00
3. WHOLESALE SALES REPRESENTATIVE PERMIT	\$ 25.00

VENDING MACHINE PERMITS:

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| 1. VENDING MACHINE PERMIT | \$100.00 |
| 2. VENDING MACHINE PERMIT STAMP | \$ 10.00 EACH |

MANUFACTURERS SALES REPRESENTATIVE PERMIT:

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| 1. MFG. SALES REPRESENTATIVE PERMIT | \$ 25.00 |
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VENDING MACHINE DEALER'S LICENSE:

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| 1. DEALER'S LICENSE
(Anyone selling vending machines in the state) | \$ 25.00 |
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SPECIAL EVENT ONE TIME PERMIT:

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| 1. SPECIAL EVENT PERMIT | \$ 5.00 |
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DUPLICATE PERMIT:

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| 1. DUPLICATE PERMIT REQUEST | \$ 5.00 |
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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 Definitions - The following definitions shall apply to the following terms as used in Ark. Code Ann. § 4-75-708 of the Unfair Cigarette Sales Act (as may be amended):

- A. "Rebate" or "Concession" shall mean any direct or indirect:
 - (1) financial incentive, (including, but not limited to, extended credit) inducement, allowance, compensation, other benefit or Tying Agreement (as defined herein) offered or extended to any Customer Of A Wholesaler (as defined here) in connection with the sale of cigarettes;
 - (2) providing of advertising, promotional or marketing products, displays, give away items or services to any Customer Of A Wholesaler, with exception of those materials or displays provided by the manufacturers which are delivered by the Wholesaler; or
 - (3) providing any of the above to any affiliate, owner, subsidiary or agent of any Customer Of A Wholesaler.
- B. "Customer Of A Wholesaler" shall mean any person or entity to whom the Wholesaler provides cigarettes in connection with the business of the Wholesaler. For purposes of determining who is a Customer Of A Wholesaler, any of the following shall be deemed to be a Customer Of A Wholesaler to the extent that the Wholesaler provides any Rebate or Concession to:
 - (1) members of the family of any person who owns an interest in a Customer Of A Wholesaler;
 - (2) any individual, partnership, trust or entity which owns an interest in a Customer Of A Wholesaler;
 - (3) any corporation which is a member of the same controlled group (as defined in Section 1563 of the Internal Revenue Code of 1986, as amended) as a Customer Of A Wholesaler;
 - (4) any beneficiary, partner, shareholder or member of any trust, partnership, corporation, limited liability company, association or entity which owns an interest in a Customer Of A Wholesaler; or
 - (5) any agent of the above.

- C. "Tying Agreement" shall mean any direct or indirect agreement (whether formal, informal, oral or written) whereby any Rebate or Concession is offered to a Customer Of A Wholesaler or non-tobacco products in exchange for the opportunity to provide cigarettes to a Customer Of A Wholesaler.
- D. "Inducement By Retailer" shall mean, in addition to the inducement, procurement or attempt to induce or procure as set forth under Ark. Code Ann. § 4-75-708, any direct or indirect acceptance by a Retailer (or any affiliate, owner or family member of an owner of a Retailer) of any Rebate Concession as defined herein in these Regulations.

9.2 Interpretive Ruling - To the extent any permit holder has questions concerning whether an act rises to the level of a Rebate or Concession, then such Wholesaler or Retailer may submit a written ruling request to the Director seeking guidance on such questions, and shall not engage in such activity unless and until a favorable ruling is received from the Director. The Director shall issue a written ruling response within 60 days from the date such written ruling request was received.

9.3 Penalties For Failure To Comply - Any permit holder who violates the provisions of this Regulation shall be subjected to all sanctions set forth in A.C.A. § 26-57-201, (the Arkansas Tobacco Products Tax Act) and these Regulations, 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 an Order and Notice of Hearing.

10.2 Administrative Procedures Act - All hearings shall be held in accordance with the Administrative Procedures Act.

10.3 Notice of Hearing - The Order and Notice of Hearing shall be served upon the respondent by mailing the same to the respondent at the address on file at the Board's office, if any. 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 Order and Notice of hearing, if sent to the last address on file at the Board, shall not constitute a failure to serve the permit holder. The Order and Notice of Hearing shall be mailed to the respondent at least 20 days prior to the hearing.

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, Nonrenewal or Issuance of a Civil Penalty.

- A. The violation of any of the provisions of Rules and Regulations of the Board.
- 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, nonrenewal 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 “First Offenses” - If a complaint alleging the violation of Ark. Code Ann. § 5-27-227, by a licensee of the Board, is received by the Board, and:

- A. The licensee has not previously received, within four years of the date of the alleged offense, a “warning letter” as set out herein, and
- B. The Board, at its discretion, determines that there are reasonable grounds to believe that a violation has occurred.

The Board shall direct the Director of the Board to issue a letter of warning to the alleged violator and requesting such response from the alleged violator as the director feels is appropriate. Such action is not a determination of a violation by the Board.

12.2 “Second” and Later Offenses - If a complaint alleging the violation of Ark. Code Ann. § 5-27-227, by a licensee of the Board, is received by the Board, and:

- A. The licensee has previously received, within four years of the date of the alleged offense, a “warning letter” as set out herein, and
- B. The Board, at its discretion, determines that there are reasonable grounds to believe that a violation has occurred.

The Board shall direct that and Order and Notice of Hearing be issued to the licensee for the appropriate allegation, ignoring the offense for which the original “warning letter” was forwarded.

12.3 Offenses by Non-Licensees - If a complaint alleging the violation of Ark. Code Ann. § 5-27-227, by a non-licensee of the Board, is received by the Board, and the Board, at its discretion, determines that there are reasonable grounds to believe that a violation has occurred, the Board may direct that and Order and Notice of Hearing be issued to the respondent for the appropriate allegation.

12.4 Information to be Given to the Board – Timeliness of Information - In order for the Board to comply with notice requirements of Arkansas law, alleged violations of Ark. Code Ann. § 5-27-227 reported to the Board 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.

12.5 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.

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 – COST AND MINIMUM PRICE (UNFAIR CIGARETTE SALES ACT)

Act 1337 OF 1997 charged the Board with the responsibility of administering and enforcing the Arkansas Unfair Cigarette Sales Act, Ark. Code Ann. § 4-75-701 et seq. Pursuant to an injunction issued by the Chancery Court of Chicot County, the Board is not permitted to modify Miscellaneous Tax Regulation 1988-2 until such time as certain conditions have been met, and/or the injunction is lifted. Therefore, Regulation 1988-2, which dealt with Cost and Minimum Price (Unfair Cigarette Sales Act) is by this reference included into these regulations as Article VI. Miscellaneous Tax Regulation 1988-2 calls for or requires administration, enforcement or other action by the Department of Finance and Administration, Revenue Division, Miscellaneous Tax Section, the Board shall administer, enforce or act, not the Department of Finance and Administration, Revenue Division, Miscellaneous Tax Section.

SECTION 15 - MODIFICATION OF RULES AND REGULATIONS

15.1 Modification of These Rules - These Rules and Regulations may be modified or changed from time to time in accordance with the Administrative Procedures Act.

