

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Finance & Administration

Department Arkansas Tobacco Control

Contact Will Olson, ATC Attorney E-mail william.olson@arkansas.gov Phone 501-682-9756

Statutory Authority for Promulgating Rules A.C.A. 4-75-701, et al., 26-57-201, et al., A.C.A. 5-27-227, and Act 940 of 2021.

Rule Title: Online Cigar Sales and Delivery, Section 4

Intended Effective Date
(Check One)

Date

☐ Emergency (ACA 25-15-204)

Legal Notice Published 08/07/2022 - 08/09/22

☒ 10 Days After Filing (ACA 25-15-204)

Final Date for Public Comment 09/08/2022

☐ Other _____
(Must be more than 10 days after filing date.)

Reviewed by Legislative Council 10/21/2022

Adopted by State Agency 09/08/2022

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Will Olson

william.olson@arkansas.gov

11/4/2022

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

501-682-9756

greg.sled@arkansas.gov

Phone Number

E-mail Address

Director, Arkansas Tobacco Control

Title

11/4/2022

Date

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.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Finance and Administration

DIVISION Arkansas Tobacco Control ("ATC")

PERSON COMPLETING THIS STATEMENT Greg Sled

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To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Online Cigar Sales and Delivery, Section 4

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☒ No ☐
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If an agency is proposing a more costly rule, please state the following:

- a) How the additional benefits of the more costly rule justify its additional cost;

NA

- b) The reason for adoption of the more costly rule;

NA

- c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

NA

- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

NA

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue \$ 0.00
Federal Funds \$ 0.00
Cash Funds \$ 0.00
Special Revenue \$ 0.00
Other (Identify) \$ 0.00

General Revenue \$ 0.00
Federal Funds \$ 0.00
Cash Funds \$ 0.00
Special Revenue \$ 0.00
Other (Identify) \$ 0.00

Total \$ 0.00

Total \$ 0.00

b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue \$ 0.00
Federal Funds \$ 0.00
Cash Funds \$ 0.00
Special Revenue \$ 0.00
Other (Identify) \$ 0.00

General Revenue \$ 0.00
Federal Funds \$ 0.00
Cash Funds \$ 0.00
Special Revenue \$ 0.00
Other (Identify) \$ 0.00

Total \$ 0.00

Total \$ 0.00

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$0

\$0

The proposed rules require age verification upon delivery of cigars. ATC acknowledges that some common carriers may charge for age verification delivery, however, ATC is unable to determine a total estimated cost by fiscal year to any private individual, entity or business because of unknown variables such as number of participants, common carrier pricing, and what participants actually pay, if anything.

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$0

\$0

Implementing the proposed rules is not expected to increase costs to state, county, and municipal government.

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?
Yes ☐ No ☒

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.