

# ARKANSAS REGISTER

## Proposed Rule Cover Sheet



Secretary of State  
John Thurston  
500 Woodlane Street, Suite 026  
Little Rock, Arkansas 72201-1094  
(501) 682-5070  
[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



---

Name of Department \_\_\_\_\_

Agency or Division Name \_\_\_\_\_

Other Subdivision or Department, If Applicable \_\_\_\_\_

Previous Agency Name, If Applicable \_\_\_\_\_

Contact Person \_\_\_\_\_

Contact E-mail \_\_\_\_\_

Contact Phone \_\_\_\_\_

---

Name of Rule \_\_\_\_\_

Newspaper Name \_\_\_\_\_

Date of Publishing \_\_\_\_\_

Final Date for Public Comment \_\_\_\_\_

Location and Time of Public Meeting \_\_\_\_\_



State of Arkansas  
Department of  
Finance  
And Administration

**DFA - ARKANSAS  
TOBACCO CONTROL**  
101 E. Capitol Ave., Suite 401  
Little Rock, AR 72201  
Phone: (501) 682-9756  
Fax: (501) 682-9760  
<https://www.atc.arkansas.gov>



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

**August 5, 2022**

### **I. PURPOSE**

Arkansas Tobacco Control (“ATC”) is seeking legislative review and approval of proposed amendments and changes to Section 4 of the Arkansas Tobacco Control Board Rules.

Act 940 of 2021 amended the definition of “Retailer,” under Arkansas Code Annotated § 26-57-203(27), to authorize the online sale and delivery of cigars: A Retailer now includes a person that “[h]as a physical presence in Arkansas and that purchases cigars from permitted wholesalers for the purpose [of] online retail sale of the cigars to buyers inside and outside the state.”

The purpose of these proposed rule amendments is to add rule language regarding online sales of cigars and related safe measures to prevent online sales and shipping to minors in light of both Act 940 of 2021 and Arkansas Code Annotated § 5-27-227 (Sales to Minors).

### **II. BACKGROUND**

After filing the proposed rules pursuant to Arkansas law, Public Notice was published on Sunday, March 13, 2022 through Tuesday, March 15, 2022 in the Arkansas Democrat-Gazette. Publication of that notice began the public comment period. ATC also posted the Public Notice with the Arkansas Secretary of State and on the ATC website. A public comment period hearing was held on April 14, 2022. The public comment period closed April 14, 2022.

Just prior to the April 14, 2022 public comment period hearing, ATC staff received two (2) verbal objections/comments to the proposed rule amendments pertaining to online cigar rules (Sections 4.3 through 4.9) via telephone. ATC did not receive any written comments or objections from person or organizations during the public comment period. The following two (2) people made comments over phone to ATC in opposition to the portion of the proposed rule amendments pertaining to online cigar sales and delivery:

- i. **Phone Commenter:** Mr. Brian Waters, Open Door Cigars, LLC

**Comments:** Mr. Waters expressed concern with the online cigar sales portion of the proposed rule amendments, as drafted. In particular, Mr. Waters

was concerned that Section 4.5, “Requirements for accepting order for delivery sale,” and Section 4.6, “Requirements for shipping a delivery sale,” placed a burden on Arkansas retailers that may not be equally placed upon non-Arkansas businesses or even other industries. Mr. Waters requested additional time to work with Arkansas Tobacco Control in addressing his concerns.

**Response:** Arkansas Tobacco Control pulled the sections of the proposed rules pertaining to online cigar sales, Sections 4.3 through 4.9, for further review and later promulgation. Upon motion and a second, on April 14, 2022, the Arkansas Tobacco Control Board approved the proposed rules without Sections 4.3 through 4.9.

**ii. Phone Commenter:** Arkansas State Representative Les Eaves

**Comment:** An Arkansas State Representative expressed concern with the online cigar sales portion of the proposed rule amendments, as drafted. In particular, the Arkansas State Representative was concerned that Section 4.5, “Requirements for accepting order for delivery sale,” and Section 4.6, “Requirements for shipping a delivery sale,” placed a burden on Arkansas retailers that may not be equally placed upon non-Arkansas businesses or even other industries and wanted to ensure the privacy of Arkansas consumers was adequately protected during the age verification process. The Arkansas State Representative requested additional time to work with Arkansas Tobacco Control in addressing their concerns, including the concerns of any constituent.

**Response:** Arkansas Tobacco Control pulled the sections of the proposed rules pertaining to online cigar sales, Sections 4.3 through 4.9, for further review and later promulgation. Upon motion and a second, on April 14, 2022, the Arkansas Tobacco Control Board approved the proposed rules without Sections 4.3 through 4.9.

The ATC Board approved the pulling of Sections 4.3 through 4.9 from the proposed ATC rule amendments for further review and later promulgation of those rules, at the April 14, 2022 Meeting. The remaining proposed rule amendments remain unchanged, completed the rule promulgation process and are now final rules.

Since the April 14, 2022 ATC Board Meeting, ATC staff has met with, discussed with or sent for review the amended rules (Section 4.3 through 4.9) with interested parties, including the two (2) verbal objectors/commentors.

**Changes to Section 4: Update retail permit language regarding online sales of cigars and related safe measures to prevent online sales and shipping to minors in light of Act 940 of 2021 and A.C.A. § 5-27-227 (Sales to Minors).**

- Act 940 of the 93rd General Assembly, Regular Session, 2021, amends the definition of “Retailer” under A.C.A. § 26-57-203(27), concerning the definitions used under the

Arkansas Tobacco Products Act of 1977, to include and authorize permitted Arkansas-based cigar retailers to sell cigars online to customers inside and outside the State of Arkansas.

- A.C.A. § 5-27-227 prohibits anyone from giving, bartering or selling to a minor (a person under the age of 21) tobacco in any form, cigarette paper, vapor products, alternative nicotine products, e-liquid products, and any component of a vapor product, alternative nicotine product or e-liquid product.

### **III. SUMMARY OF PROPOSED CHANGES CHART**

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

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

<b>REVISION BY SECTION</b>	<b>SUPPORTING INFORMATION</b>
<b>Section 4 – Retail Permit Holders</b>	
<ul style="list-style-type: none"> <li>▪ <b>4.1.</b> Change language “the Arkansas Control Board” to “Arkansas Tobacco Control”</li> <li>▪ <b>4.3. Add the following language:</b>   <p>"4.3 <u>Online Cigar Sales.</u> 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.</p> <p>“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).</p> <p>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</p> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Change language to better harmonize with Statute (A.C.A. § 26-57-256 and A.C.A. § 26-57-257).</li> <li>▪ Additional language in light of Act 940 to ensure compliance with A.C.A. 5-27-227 (Sales to Minors). Act 940 of 2021 added to the definition of a retailer: A person that “[h]as a physical presence in Arkansas and that purchases cigars from permitted wholesalers for the purpose the [sic] online sale of the cigars to buyers inside and outside the state.”</li> <li>▪ Definition of “Cigar” and “Cigars” match the definitions provided in Ark. Code Ann. § 26-57-260(4)(A)–(C) and definition of “Sale” or “Sell” match the definition provided in A.C.A. § 26-57-203(28)(A).</li> </ul>

internet. “Sale” or “Sell” has the same meaning as provided in A.C.A. § 26-57-203(28)(A).

▪ **4.4. Add the following language:**

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

▪ **4.5. Add the following language:**

“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 form 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;

- Language added in light of Act 940 to ensure compliance with A.C.A. § 26-57-214.

- Additional language in light of Act 940 to ensure compliance with A.C.A. 5-27-227 (Sales to Minors).



<p>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.”</p> <p>▪ <b><u>4.9.</u> Add the following language:</b></p> <p>“4.9 <u>Collection of Taxes.</u> A retailer selling cigars online pursuant to this rule is responsible for the applicable sales taxes and excise taxes.”</p>	<p>▪ Additional language in light of Act 940 and harmonizes with A.C.A. § 26-57-255.</p> <p>▪ Additional language in light of Act 940 and to ensure compliance with applicable tax laws.</p>
---	--

## 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

TELEPHONE NO. (501) 682-9756

FAX NO. (501) 682-9760

EMAIL: Greg.Sled@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(c), 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

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

Total \$ 0.00

Next Fiscal Year

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

Total \$ 0.00

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

Current Fiscal Year

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

Total \$ 0.00

Next Fiscal Year

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

\$ 0

Next Fiscal Year

\$ 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

\$ 0

Next Fiscal Year

\$ 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.

## CLEAN

### 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.

## CLEAN

- (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.

## MARKUP

### 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.

## MARKUP

- (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.



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

**DFA - ARKANSAS  
TOBACCO CONTROL**  
101 E. Capitol Ave., Suite 401  
Little Rock, AR 72201  
Phone: (501) 682-9756  
Fax: (501) 682-9760  
<https://www.atc.arkansas.gov>



**LEGAL NOTICE OF RULEMAKING**  
**Request for Public Comment**

In compliance with Act 434 of 1967, the Administrative Procedures Act, as amended, notice is hereby given that the Arkansas Tobacco Control Division of the Department of Finance and Administration intends to adopt Amended Rule titled, "Online Cigar Sales and Delivery, Section 4." The purpose of the Amended Rule is to add rule language regarding online sales of cigars and related safe measures to prevent online sales and shipping to minors in light of Act 940 of 2021 and A.C.A. § 5-227 (Sales to Minors).

A public comment hearing will be held on **September 8, 2022**, at **10:00 AM** in the first-floor conference room at **101 E. Capitol Ave., Suite 119, Little Rock, Arkansas 72201**.

All interested parties may attend and present their views on the subjects and issues involved. The proposed Rule amendments are available on the Arkansas Tobacco Control's website: [www.atc.arkansas.gov](http://www.atc.arkansas.gov).

Interested persons and parties may submit written comments by or before September 7, 2022 to Greg Sled, Director, Arkansas Tobacco Control Division, 101 E. Capitol Ave., Suite 401, Little Rock, Arkansas 72201 or emailed to the following email: [william.olson@arkansas.gov](mailto:william.olson@arkansas.gov).