

# ARKANSAS TOBACCO SETTLEMENT COMMISSION

## BYLAWS

*AS AMENDED BY THE COMMISSION ON SEPTEMBER 21, 2010*

### I. COMMISSION CREATION & OPERATION

#### A. COMMISSION CREATION

The Arkansas Tobacco Settlement Commission (ATSC) is an agency of state government created by Sections 17 and 18 of the Tobacco Settlement Proceeds Act of 2000, Ark. Code Ann. §19-12-101 through §19-12-119, and is authorized under section 19-12-117 (b) to adopt bylaws for the governance of the Commission.

#### B. COMMISSION PROCEDURE & POLICY

1. The business of the Commission shall be conducted pursuant to State law, the Commission Bylaws, and Robert's Rules of Order. State law will supersede the Commission Bylaws and Robert's Rules of Order. The Commission Bylaws will supersede Robert's Rules of Order. All meetings will be conducted in conformity with the Arkansas Freedom of Information Act. These Bylaws may be amended by a two-thirds vote of the Commission.
2. The Commission staff and members will be guided by the most current version of the Arkansas Department of Finance and Administration Office of Personnel Management's *Policy and Procedures Manual*. Commission staff will seek to comply with all other applicable state rules and regulations regarding the budget, operation, and function of the Commission offices and the Commission duties.

### II. COMMISSION MEMBERSHIP

#### A. APPOINTED MEMBERS

1. Appointed members are the four members of the Commission serve by virtue of being appointed by a political official. These members include:
  - a. A healthcare professional to be selected by the Senate President Pro Tempore;
  - b. A healthcare professional to be selected by the Speaker of the House of Representatives;
  - c. A citizen selected by the Governor; and
  - d. A citizen selected by the Attorney General.
2. Appointed members shall serve four year terms and are limited to serving two, consecutive four year terms.
3. Appointed members shall begin to serve immediately upon appointment, but appointed member terms shall begin on October 1 of the year a member is appointed by their respective political official. Appointed members shall serve until replaced by a new appointee.
4. Appointed Members have full voting rights pertaining to Commission business.

#### B. EX OFFICIO MEMBERS

1. Ex Officio members are the five members who serve on the Commission as a result of their being an agency director. These members include:
  - a. The Director of the Arkansas Science and Technology Authority or his or her designee;
  - b. The Director of the Department of Education or his or her designee;
  - c. The Director of the Department of Higher Education or his or her designee;
  - d. The Director of the Department of Human Services or his or her designee;
  - e. The Director of the Department of Health or his or her designee;
2. Ex Officio Members, whether the Director of the agency or the Director's Designee, have full voting rights pertaining to Commission business.

#### C. SPECIAL AND HONORARY MEMBERS

1. The Commission may appoint special or honorary members to the Commission as needed through a majority vote.
2. These special and honorary members have no binding vote pertaining to Commission business.
3. The term of special and honorary members will be one year. Upon a vote by the Commission, special and honorary members may serve more than one term in succession.

### **III. QUORUM & VOTING**

#### A. QUORUM:

1. The presence of five appointed or ex officio members of the Commission shall constitute a quorum for Commission business.
2. The presence of at least a majority of the members of a committee of the Commission shall constitute a quorum for committee business.

#### B. VOTING:

1. The Chair of the Commission may call for votes through any method allowed under Robert's Rules of Order or any method approved by the members of the Commission.
2. Proxy voting will be allowed for Commissioners unable to participate in a meeting. Proxy voting must be submitted to the Executive Director prior to the start of the meeting at which the vote will be cast.

#### C. ELECTION OF OFFICERS & COMMITTEES:

1. Commission officers and committee members shall be elected at the last meeting of the calendar year.

### **IV. COMMISSION OFFICERS**

The Commission membership shall elect from its body officers to serve in the following capacities and to perform the following duties. The term of service for these officers shall be at least one year. If the Commission has not selected officers to replace them after the year period, then the officers will continue to serve until their successors have been selected.

1. Chair:
  - a. Preside over all Commission meetings.
  - b. Serve as Chair of the Executive Committee.

- c. Serve as an ex officio member of all Commission Committees.
  - c. Perform any other duties applicable to the position or designated by the Commission.
2. Vice Chair:
- a. Preside at Commission meetings in the absence of the Chair.
  - b. Serve as a member of the Executive Committee.
  - c. Perform any other duties applicable to the position or designated by the Commission.

## **V. COMMISSION COMMITTEES**

### **A. STANDING COMMITTEES**

#### **1. EXECUTIVE COMMITTEE**

- a. The Executive Committee shall be composed of three members of the Commission. The Chairman of the Commission shall serve as Chairman of the Executive Committee. The Commission Vice Chairman will serve on the Executive Committee. The remaining members of the Executive Committee shall be elected.
- b. The Executive Committee shall monitor and direct administrative procedures and office functions as necessary. The Executive Committee may also recommend policies, directives, and actions to the Commission.

### **B. SPECIAL COMMITTEES**

Special committees may be created at the directive of the Chairman or by a majority vote of the Commission. A special committee may serve for a set term, determined in the committee's creation, or until dissolved by their respective body of creation.

### **C. COMMITTEE MEMBERSHIP**

Unless otherwise prescribed in the bylaws or through the committee creation, members of Commission committees may be any appointed, ex officio, special or honorary member of the Commission. Special or honorary members of any committee may vote on matters pertaining to the business of the committee on which they serve, but they shall not vote on any action taken by the full Commission.

## **VI. COMMISSION MEETINGS**

### **A. REGULAR QUARTERLY MEETINGS**

The Commission shall meet at least four times each year as required by the Act. These meetings shall take place once a quarter at a location and time determined by the Chair. Notice will be provided to Commissioners prior to each regular quarterly meeting either by postal mail, electronic mail, or telephone.

### **B. SPECIAL CALLED MEETINGS**

- 1. The Chair may call a special meeting of the Commission at any time, as authorized by the Act.
- 2. Other special meetings shall be called by the Chair upon the written request of at least three members of the Commission. The Chair shall set a time and location for any such requested meetings within one calendar week of receipt of the written request.

3. Any special meeting requires notice to Commissioners at least twenty four hours in advance of the meeting, unless this same notice requirement is waived by a majority of Commissioners.

#### C. MEETING AGENDA

The Executive Director will prepare the agenda for regular and special meetings. The agenda will be distributed to Commission members, ATSC Programs, and be available to the public in advance of the meeting. The agenda should generally state the items that will be considered at a meeting. The agenda may be amended by the Chair or through a vote of the Commission.

### **VII. GRANTS**

#### A. GRANT AUTHORIZATION

Section 17(i) of the Tobacco Settlement Proceeds Act states:

*If the deposits into the Arkansas Tobacco Settlement Commission Fund exceed the amount necessary to pay the costs and expenses described in Sub-section (h) of this Section, then the ATSC is authorized to make grants as follows:*

*(A) Those organizations eligible to receive grants are non-profit and community based.*

*(B) Grant criteria shall be established based upon the following principles:*

*i) All funds should be used to improve and optimize the health of Arkansans;*

*ii) All funds should be used on long-term projects that improve the health of Arkansans;*

*iii) Future tobacco-related illness and health care costs in Arkansas should be minimized through this opportunity; and*

*iv) Funds should be invested in solutions that work effectively and efficiently in Arkansas.*

*(C) Grant awards shall be restricted in amounts up to fifty-thousand dollars (\$50,000) per year for each eligible organization.*

#### B. GRANT POLICY & PROCEDURES

Following ATSC staff review for eligibility and compliance with application requirements, an external independent review committee will evaluate applications using a grading system adopted by the Executive Committee. Grants will be reviewed on a competitive basis, with the independent reviewers using scoring priorities provided to them by the Executive Committee. All applications will be reviewed and rated quantitatively and qualitatively. Funding recommendations will be presented to the ATSC by the Executive Committee. Final funding decisions will be made by the ATSC, under the authority granted to them within the Act §19-12-117(i).

### **VIII. RULE-MAKING**

#### A. AUTHORITY

The agency has been authorized by the Legislature to promulgate rules, Arkansas Code Annotated §19-12-117. The agency follows the procedural requirements of the Arkansas Administrative Procedure Act, in particular A.C.A. §25-15-203 and §25-15-204. Additionally, the agency is required to abide by the provisions of A.C.A. §10-3-309.

## B. INITIATION OF RULE-MAKING

The process of adopting a new rule or amending or repealing an existing rule (hereinafter referred to "rule-making") may be initiated by request of the governing body that the staff submit proposed drafts. Additionally, staff of the agency may request-permission of the agency to initiate rule-making. Third persons outside the agency may petition for the issuance, amendment, or repeal of any rule.

## C. PETITION TO INITIATE RULE-MAKING

Third parties may initiate rule-making to adopt, amend, or repeal a rule by filing a petition with the agency to initiate rule-making. The petition must contain the name, address, and telephone number of the petitioner, the specific rule or action requested, the reasons for the rule or action requested, and facts showing that the petitioner is regulated by the agency or has a substantial interest in the rule or action requested.

The petition to initiate rule-making shall be filed with the agency Executive Director. Within thirty (30) days after submission of the petition, the agency will either deny the petition, stating its reasons in writing, or will initiate rule-making. A special meeting will be called if necessary to meet this time frame.

## D. PRE-FILING WITH THE BUREAU OF LEGISLATIVE RESEARCH

Thirty (30) days before the public-comment period ends, the agency will file with the Bureau of Legislative Research the text of the proposed rule or amendment as well as a financial impact statement and a Bureau of Legislative Research questionnaire as provided by A.C.A. §10-3-309.

## E. PUBLIC INPUT

1. Before finalizing language of a proposed new rule or an amendment to, or repeal of, an existing rule, the agency will receive public input through written comments and/or oral submissions. The agency will designate in its public notice the format and timing of public comment.
2. Any public hearing will provide affected persons and other members of the public a reasonable opportunity for presentation of evidence, arguments, and oral statements within reasonable conditions and limitations imposed by the agency to avoid duplication, irrelevant comments, unnecessary delay, or disruption of the proceedings.
3. The agency chair, any member of the agency, or any person designated by the agency may preside at the public hearing. The agency must ensure that the agency personnel responsible for preparing the proposed rule or amendment are available, and will notify third parties initiating rule changes to be available to explain the proposal and to respond to questions or comments regarding the proposed rule.
4. The agency must preserve the comments made at the public hearing by a certified court reporter or by recording instruments.
5. Any person may submit written statements within the specified period of time. All timely, written statements will be considered by the agency and be made a part of the rule-making record.

## F. NOTICE OF RULE-MAKING

The agency will give notice of proposed rule-making to be published pursuant to A.C.A. §25-15-204. The notice will set any written comment period and will specify the time, date, and place of any public hearing.

#### G. THE DECISION TO ADOPT A RULE

1. The agency will not finalize language of the rule or decide whether to adopt a rule until the period for public comment has expired.
2. Before acting on a proposed rule, the agency will consider all of the written submissions and/or oral submissions received in the rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in the rule-making proceedings.
3. The agency may use its own experience, specialized knowledge, and judgment in the adoption of a rule.

#### H. VARIANCE BETWEEN ADOPTED RULE AND PUBLISHED NOTICE OF PROPOSED RULE

1. The agency may not adopt a rule that differs from the rule proposed in the published notice of the intended rule-making on which the rule is based unless:
  - a. The final rule is in character with the original scheme and was a logical outgrowth of the notice and comments stemming from the proposed rule; or
  - b. The notice fairly apprised interested persons of the subject and the issues that would be considered so that those persons had an opportunity to comment.
2. In determining whether the final rule is in character with the original scheme and was a logical outgrowth of the notice and comments, and that the notice of intended rule-making provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the agency must consider the following factors:
  - a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests; and
  - b. The extent to which the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the notice of intended rule-making; and
  - c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the notice of intended rule-making.

#### I. CONCISE STATEMENT OF REASONS

1. When requested by an interested person, either prior to the adoption of a rule or within thirty (30) days after its adoption, the agency shall issue a concise statement of the principal reasons for and against its adoption of the rule. Requests for such a statement must be in writing -and be delivered to the Executive Director. The request should indicate whether the statement is sought for all or only a specified part of a rule. A request will be considered to have been submitted on the date on which it is received by the agency.
2. The concise statement of reasons must contain:
  - a. The agency's reasons for adopting the rule;
  - b. All indication of any change between the text of the proposed rule and the text of the rule as finally adopted, with explanations for any such change; and

c. The principal reasons urged in the rule-making procedure for and against the rule, and the agency's reasons for overruling the arguments made against the rule.

#### J. CONTENTS

The agency shall cause its rules to be published and made available to interested persons. The publication must include:

1. The text of the rule; and
2. A note containing the following:
  - a. The date(s) the agency adopted or amended the rule;
  - b. The effective date(s) of the rule;
  - c. Any findings required by any provisions of law as a prerequisite to adoption for effectiveness of the rule; and
  - d. Citation to the entire specific statutory or other authority authorizing the adoption of the rule;
3. The publication of the rule(s) must state the date of publication.

#### K. FORMAT

The published rules of the agency will be organized substantially in the following format:

1. Statement of Organization and Operations
2. Information for Public Guidance
3. General Organization
4. Rule-making
5. Emergency Rule-making
6. Declaratory Orders

#### L. INCORPORATION BY REFERENCE

By reference in a rule, the agency may incorporate all or any part of a code, standard, rule, or other matter if the agency finds that copying the matter in the agency's rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the agency rule must fully and precisely identify the incorporated matter by title, citation, date, and edition, if any; briefly indicate the precise subject and general contents of the incorporated matter; and state that the rule does not include any later amendments or editions of the incorporated matter. The agency may incorporate such a matter by reference in a proposed or adopted rule only if the agency makes copies of the incorporated matter readily available to the public. The rules must state how and where copies of the incorporated matter may be obtained at cost from this agency, and how and where copies may be obtained from an agency of the United States, this state, another state, or the organization, association, or persons originally issuing that matter. The agency must retain permanently a copy of any materials incorporated by reference in a rule of the agency.

#### M. FILING

1. After the agency formally adopts a new rule or amends a current rule or repeals an existing rule, and after the rule change has been reviewed by the Legislative Counsel, the staff will file final copies of the rule with the Secretary of State, the Arkansas State

Library, and the Bureau of Legislative Research, or as otherwise provided by A.C.A. §25-15-204(d).

2. Proof of filing a copy of the rule, amendment, or repeal with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research will be kept in a file maintained by the administrative support staff of the Commission.

3. Notice of the rule change will be posted on the agency Web page (when available).

#### N. EMERGENCY RULE-MAKING

##### 1. REQUEST FOR EMERGENCY RULE-MAKING

The proponent of a rule may request the agency to adopt an emergency rule. In addition to the text of the proposed rule or amendment to an existing rule and any other information required by Rule N (C), the proponent will provide a written statement setting out the facts or circumstances that would support a finding of imminent peril to the public health, safety, or welfare.

##### 2. FINDING OF AN EMERGENCY

Upon receipt of the written statement requesting an emergency rule-making and documents or other evidence submitted in support of the assertion that all emergency exists, the agency will make an independent judgment as to whether the circumstances and facts constitute an imminent peril to the public health, safety, or welfare requiring adoption of the rule upon fewer than 30 days notice. If the agency determines that the circumstances warrant emergency rule-making, it will make a written determination that sets out the reasons for the agency's finding that an emergency exists. Upon making this finding, the agency may proceed to adopt the rule without any prior notice or hearing, or it may determine to provide an abbreviated notice and hearing.

#### O. EFFECTIVE DATE OF EMERGENCY RULE

The emergency rule will be effective immediately upon filing, or at a stated time less than ten (10) days thereafter, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency will file with the rule its written findings justifying the determination that emergency rule-making is appropriate and, if applicable, the basis for the effective date of the emergency rule being less than ten days after the filing of the rule pursuant to A.C.A. §25-15-204(e). The agency will take appropriate measures to make emergency rules known to persons who maybe affected by then.

### **IX. DECLARATORY ORDERS**

#### A. PURPOSE AND USE OF DECLARATORY ORDERS

A declaratory order is a means of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory order is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency. A petition or declaratory order must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

#### B. THE PETITION



The process to obtain a declaratory order is begun by filing with the Executive Director a petition that provides the following information:

1. The caption shall read: Petition for Declaratory Order Before Arkansas Tobacco Settlement Commission.
2. The name, address, telephone number, and facsimile number of the petitioner.
3. The name, address, telephone number, and facsimile number of the attorney of the petitioner.
4. The statutory provision(s), agency rule(s), or agency order(s) on which the declaratory order is sought.
5. A description of how the statutes, rules, or orders may substantially affect the petitioner and the petitioner's particular set of circumstances, and the question or issue on which petitioner seeks a declaratory order.
6. The signature of the petitioner or petitioner's attorney
7. The date.
8. Request for a hearing, if desired.

#### C. AGENCY DISPOSITION

1. The agency may hold a hearing to consider a petition for declaratory statement. If a hearing is held, it shall be conducted in accordance with A.C.A. §25-15-208 and §25-15-213, and the agency's rules for adjudicatory hearings.
2. The agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Within ninety (90) days of the filing of the petition, the agency will render a final order denying the petition or issuing a declaratory order.

#### **X. INFORMATION FOR PUBLIC GUIDANCE**

The Executive Director shall handle any Arkansas Freedom of Information Act requests, and any public or press questions regarding the Commission. The public or press may obtain information about the agency or make submissions or requests by telephone, postal mail, or electronic mail. The Commission's offices are located at 101 East Capitol Avenue, Suite 108 in Little Rock, Arkansas. The Commission's website can be found at [www.atsc.arkansas.gov](http://www.atsc.arkansas.gov).

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