



MARYLAND ALCOHOL, TOBACCO, AND CANNABIS COMMISSION

STANDARD OPERATING PROCEDURE		
Section: Legal and Legislative Division Practices	Number: 1.02	Pages: 5
Policy: Administrative Hearing Procedure for Underage Tobacco Sales Violations		
Effective Date: 12/14/23	Revision Date:	
Policy Drafter: Jeffrey Hann, Assistant Director of the Legal and Legislative Division		
Approving Officer: Thomas Akras, Director of the Legal and Legislative Division		

Purpose: This procedure outlines the Office of the Executive Director's (OED) case referral, file screening, and administrative hearing process pursuant to adjudicated violations of Business Regulation Article Titles §16, §16.5, §16.7, and/or §16.9 that relate to sales of cigarettes, electronic smoking devices, or other age-restricted tobacco products to a person under 21 years of age by a licensed retailer ("Underage Sales"). These procedures are intended to supplement and be used in conjunction with the procedures for administrative hearings found in SOP LLD 1.01.

Responsible Staff: The Director and Assistant Director of the Legal and Legislative Division, the Director and Agents-in-Charge of the Field Enforcement Division, the Executive Associate of the Office of the Executive Director, any other hearing officer as designated by the Executive Director.

Staff Monitor: Compliance with these procedures shall be monitored by the Executive Director, the Director of the Field Enforcement Division, and the Director of the Legal and Legislative Division.

Policy: Preparation and Conduct of Administrative Hearings Related to Underage Sales

1. **Application of this Procedure:** The Executive Director of the ATCC has the authority to reprimand, suspend or revoke the license of a tobacco product retailer pursuant to Business Regulation Article Titles 16, 16.5, 16.7, and 16.9 because of a violation involving selling cigarettes, other tobacco products, and/or electronic smoking devices to an individual under the age of 21.
 - a. **ATCC receives referrals from Federal, State, and local entities** - Local health and police departments are primarily responsible for conducting enforcement of State and local laws prohibiting tobacco sales to individuals under 21 within their respective jurisdictions. Enforcement actions, inspection programs, or other initiatives to identify violations may be undertaken by State and local law



enforcement agencies, inspection programs by health departments, or by federal agencies such as the Federal Drug Administration (“Reporting Agencies”).

- b. **Referral Procedures shall be followed by Reporting Agencies -** The procedures herein apply when any external reporting agency has requested that the Executive Director take administrative action to reprimand, suspend, or revoke a license issued by the Executive Director based on evidence of violations, or has otherwise reported such violations to the OED for consideration of administrative action. Failure to follow these referral procedures stipulated in this SOP, may result in a denial of a reporting agency's request to pursue administrative hearing against an alleged violator.
2. **Referral Guidance for Reporting Agencies:** Reporting agencies are advised to submit referrals to the OED for an administrative hearing when a documented pattern of underage sales violations have occurred at a licensed tobacco products' retailer. Specifically, reporting agencies shall make a referral to the OED when there has been a conviction or similar adjudicatory finding of an offense involving an unlawful sale to an underage person at a licensed retail location, accompanied by evidence of an additional violation at the location of the licensed retailer within a 12 month period. Underage Sales Referrals to the OED by Reporting Agencies shall be limited to the following violations:
 - a. Citations issued to agents of the licensed retailer under Criminal Law Article §10-107 ("Distribution of tobacco product to individuals under 21"),
 - b. Citations issued to agents of the licensed retailer under Health General Article §24-305 ("Sale, distribution, or offer for sale of electronic smoking device to individuals under 21 prohibited"), or §24-307 ("Distribution of tobacco product to minor").
 - c. Citations issued to agents of the licensed retailer based on local criminal or civil laws and ordinances of a county or municipal jurisdiction (for example, Baltimore City Health Code §12-502) or federal law (Family Smoking Prevention and Tobacco Control Act, as amended by Public Law 116-94 (2019)).
 - d. Findings of violation following inspections of a licensed retailer under FDA compliance programs or the Synar program.
3. **Procedure for Referral:** Reporting agencies are instructed to send letters of referral for administrative action, and supporting evidence, via email to the Deputy Director of the Field Enforcement Division, or by mail if they are unable to submit the materials electronically.¹
 - a. **Contents of Referral Letter:** Referral letters shall identify the licensed tobacco retailer and contain a written summary of the violations. They shall also identify a representative ("agency representative") within the reporting agency that the OED can contact for scheduling, hearing preparation, and to send notices and

¹ See Attachment A: ATCC Referral Letter Template 11/2023



requests for further information. The letter shall include an email address and phone number for the point of contact.

- b. **Supporting Materials:** Referral letters shall be accompanied by a case file or other records of the reporting agency for each violation, though reporting agencies may redact any confidential materials such as the identity of underage purchasers. The case file shall include copies of the following if applicable:
 - i. A written report summarizing the incident.
 - ii. Any available photographic evidence or recordings (images of the tobacco products purchased, sales receipt, etc.).
 - iii. Any citation(s) issued to agents of the licensed retail location.
 - iv. Official record of a District Court or Administrative disposition of the citations (i.e., a true test record of the conviction obtained from the Court, or a copy of a record of conviction on an electronic public record such as Maryland Judiciary Case Search, CJIS, or equivalent Federal electronic records).
 - v. Receipt of payment of the citation if available.
 - c. **Custodian of Records Witness Required** – The referral letter shall include the name of the individual who shall attend and serve as the custodian of records at the administrative hearing on behalf of the reporting agency. This individual need not be a fact witness – i.e., did not need to be present at the time of the alleged underage sale – but shall be able to testify that records introduced at the administrative hearing are true and correct copies and that the records were made and kept in the regular course of business of the reporting agency.
4. **General Review of Referrals and Decision to Initiate an Administrative Hearing:** Referrals shall be organized and screened by the Deputy Director of the Field Enforcement Division and presented to the Director of the Legal and Legislative Division for determination on the initiation of an administrative hearing in a similar manner as described in SOP LLD 1.01. Specifically, the review proceeds as follows for underage sales referrals:
- a. **Review and Document Collection by Deputy Director of the Field Enforcement Division** - The Deputy Director shall review each referral submitted to the OED to ensure that there are sufficient case file materials and details in the summary to identify the licensed retailer and understand the facts of the underlying incidents and their adjudicatory outcomes.
 - i. **Additional Requests for Information** - The Deputy Director may contact the reporting agency to request additional information or case file materials. The Deputy Director shall then confer with the Director of the Legal and Legislative Division on the referral.
 - b. **Director of the Legal and Legislative Division Review** – The Director shall review the case file materials to determine if the submission by the Reporting Agency meets the criteria set forth in this SOP. If the criteria have been met, then the Director shall charge the case, set a hearing date, and provide notice to all interested parties.



5. **Special Circumstances and Consultation:** In some circumstances a reporting agency may wish to make a referral for administrative action based on a single violation by a licensed tobacco retailer in the interest of public health and safety or based on unique circumstances indicating review for immediate administrative action by the OED is warranted.
 - a. **Reporting Agencies shall coordinate with Deputy Director of the Field Enforcement Division** - Reporting agencies are encouraged to contact the Deputy Director to discuss the circumstances and the available evidence to support the proposed administrative action. Reporting agencies shall also contact the Deputy Director to consult prior to referral if the case files and evidence maintained by the agency is unusual or complex, to identify the materials necessary to proceed with an administrative hearing.
 - b. **Director of the Legal and Legislative Division Review** – The Director shall review the case file materials to determine if, based on the facts and circumstances of the case, there is sufficient evidence to make an exception to the agency standard (two infractions within 12 months), and initiate an administrative action against the retail licensee.
 - i. **Final Determination for Single Violation Exception to be Made by Director of Legal and Legislative Division** - Based on the facts and circumstances, the Director may determine not to proceed on the referral, to respond with a letter of warning to the licensed tobacco retailer, or to schedule and administrative hearing and prepare a notice for the hearing.
6. **Reliance on Documentary Evidence and Notice of Facts by the Hearing Officer:** Evidence to be incorporated into the record during an administrative hearing is not subject to objection based on hearsay and does not require formal rules of authentication or requirements for original copies of documents. Additionally, the hearing officer may declare a fact presented as evidence as true without a formal presentation of evidence (i.e. - judicial notice). As such, the violation may be established solely by the submission of a record of the conviction by a District Court on a citation or similar adjudicatory finding.
7. **Contents of Notice to the License Holder and Supporting Materials:** Hearing notices related to underage sales shall contain all the required information described in SOP LLD 1.01.
8. **Scheduling and Location of Hearings:** Hearings shall be held at the ATCC's offices located at 1215 Fort Avenue, Suite 300, Baltimore, Maryland 21230. Hearings shall be scheduled on a date and time as determined by the OED.
9. **Respondent's Failure to Appear at the Hearing:** Pursuant to the Business Regulations Article, if a respondent fails to appear for the scheduled hearing, the hearing officer may proceed with the hearing. The hearing officer shall make a record of the date and manner of the issuance of the notice to the respondent and any evidence that the notice was delivered to the licensed retailer's premises or received by an agent. The hearing officer may make a determination of the facts and the administrative action based on the uncontested evidence provided by the reporting agency or other facts known to the



hearing officer and agents of the OED. These facts shall be preserved in the hearing record and summarized in the final determination order.

10. **Copies of Notices and Determinations:** All notices and final determinations shall be delivered to the respondent licensed retailer in the manner described in SOP LLD 1.01. Additionally, the hearing officer, or upon request the Director of the Legal and Legislative Division, shall provide copies by email to the representative of the reporting agency and to the Director of the Center for Tobacco Prevention and Control of the Maryland Department of Health (or their designee).

Approved,

Thomas R. Akras

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Director, Legal and Legislative Division

