



Ministry of Health

Rules for Administrative Hearings under the *Tobacco Control Act*

Approved for public release

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INTRODUCTION

The *Tobacco Control Act* (the “act”) and the Tobacco Control Regulation (the “regulation”) establish an administrative penalty system to deal with alleged violations of certain provisions of BC’s tobacco control legislation. The administrative penalty system is an alternative to violation tickets and court-based prosecutions for some contraventions.

Tobacco Enforcement Officers (and, in some locations, Environmental Health Officers) employed by the regional health authorities in the province may request the Administrator to initiate the administrative penalty system in individual cases involving tobacco retailing, but the decision whether to do so rests with the Administrator. The Administrator is designated by the Minister under the act. The Administrator may also delegate most of his or her functions, duties or powers to other persons.

If the administrative penalty process is utilized, the Administrator must give notice to any person who is alleged to have contravened the act, the regulation or an order of the Administrator, and hold a hearing in accordance with the act, the regulation and the principles of administrative fairness. Details of the administrative penalty system are set out in sections 6.1 to 6.6 of the act, and sections 6 to 19 of the regulation.

The purpose of these Rules is to provide general guidance about the process the Administrator (or the Adjudicator, if the Administrator names a delegate to conduct this process) will follow when a request to apply the administrative penalty system is received from a regional health authority. However, the Administrator may modify these Rules in a particular case if he or she considers it appropriate to do so, and so long as the modification is consistent with the act or the regulation. Further, the Administrator may add to, amend, or rescind any or all of these Rules at any time, or make any other procedural order he or she considers necessary in the circumstances.

DEFINITIONS

- (1) Terms defined in the Act or the Regulation have the same meanings in these Rules.
- (2) In these Rules:

"Business Day" means 8:30 am to 4:30 pm Monday through Friday, excluding statutory holidays;

"Calendar Day" means the 24 hour day, any day of the week, though if time for doing an act falls or expires on a holiday or a day when the office is not open during regular business hour, the time is extended to the next day that the office is open as per Section 25(2) and 25(3) of the *Interpretation Act*;

"Document" means any form of recorded information, including information recorded in electronic form;

"Enforcement Officer" includes "Tobacco Enforcement Officers" and "Environmental Health Officers", who are any persons that are designated by Ministerial Order to administer the Act and Regulation;

"File" means to effect delivery of a document to the Administrator under Rule 15;

"Hearing Notice" means a notice given by the Administrator under section 7 of the Regulation;

"Party" includes the "Respondent", who is any person to whom a Hearing Notice is issued for allegedly contravening the Act, the Regulation or an Administrator's order, and the Enforcement Officer(s) alleging the contravention(s);

"Respondent" means the person(s) to whom a Hearing Notice is issued;

"Service" means the effective delivery of a document to a Party required to be served under the Act, the Regulation or Rule 16.

PART I: INITIATION OF THE ADMINISTRATIVE PENALTY PROCESS

Rule 1 - Enforcement Officer's Report to the Administrator

- (1) An Enforcement Officer may request the Administrator to initiate the administrative penalty process by Filing with the Administrator a report in the form set out in Appendix A to these Rules.

Rule 2 - Decision of the Administrator whether to issue a Hearing Notice

- (1) When assessing a report Filed by an Enforcement Officer and deciding whether to issue a Hearing Notice, the Administrator will consider all relevant factors, including whether the allegations contained in the report would, if proven, constitute a contravention of the Act, the Regulation or an Administrator's order.
- (2) If the Administrator decides to initiate the administrative penalty process, he or she will:
 - (a) issue a Hearing Notice in the form set out in Appendix B to these Rules, and provide a copy to the Respondent(s), in accordance with section 7 of the Regulation, and to the Enforcement Officer; and
 - (b) provide the Respondent(s) with a copy of the Enforcement Officer's report Filed under Rule 1(1) and copies of any supporting material Filed by the Enforcement Officer.
- (3) A Hearing Notice issued under Rule 2(2) will specify a hearing date not less than 45 calendar days from the date on which the Notice is delivered.
- (4) If the Administrator decides not to initiate the administrative penalty process, the Administrator will advise the Enforcement Officer in writing of his or her reasons for the decision within 15 calendar days of the date on which the Administrator has made that decision.
- (5) If the Administrator chooses not to conduct the hearing personally, he or she will name an Adjudicator to conduct the hearing.

PART II: PREPARING FOR A HEARING

Rule 3 - Parties' right to counsel

- (1) Parties may be represented by legal counsel or an agent at all pre-hearing conferences and at the hearing.

Rule 4 - Combining cases for hearing

- (1) If two or more persons are named as Respondents in respect of matters occurring at the same premises, the Administrator may direct that the matters be heard together.
- (2) If two or more contraventions are alleged against the same Respondent, the Administrator may direct that the matters be heard together.
- (3) If a Party objects to the combining of cases for hearing under Rule 4(1) or 4(2), the Party must advise the Administrator in writing of the objection and the reasons for it, and provide copies to any other Party, not less than 20 calendar days before the hearing date.
- (4) A Party who has received a copy of an objection under Rule 4(3) may File with the Administrator written submissions as to whether or not the cases should be combined for hearing, not less than 15 calendar days before the hearing date, and must Serve a copy on any other Party at the same time.
- (5) A Party may request that the Administrator issue a direction under Rule 4(1) or 4(2). Such requests must be Filed with the Administrator not less than 25 calendar days before the hearing date, and must Serve a copy on any other Party at the same time.
- (6) A Party who has received a copy of a request under Rule 4(5) may File with the Administrator written submissions concerning the request, not less than 20 calendar days before the hearing date, and must Serve a copy on any other Party at the same time.

Rule 5 - Deciding whether to hold a hearing in writing, in person or by electronic means

- (1) All hearings will be conducted in person unless the Administrator directs otherwise.
- (2) A Party may request the Administrator to hold all or part of a hearing in writing, by telephone or by other electronic means. Such requests must be

Filed with the Administrator not less than 20 calendar days before the hearing date, and must Serve a copy on any other Party at the same time.

- (3) A Party Served with a copy of a request Filed under Rule 5(2) may make written submissions within 5 calendar days to the Administrator concerning the request. At the same time, the Party making written submissions concerning a request must Serve a copy of the written submission on any other party.
- (4) The Administrator may, on his or her own initiative, consider holding all or part of a hearing in writing or by electronic means. The Administrator will advise the Parties of any proposal to do so and provide the Parties with not less than 5 calendar days to make submissions to the Administrator concerning the proposal before making a final decision on the issue.
- (5) If a hearing is to be conducted, in whole or in part, in writing, the Administrator will give direction to the Parties regarding the process for and timing of submissions.

Rule 6 - Expected duration of oral hearings

- (1) If a Party expects that more than 90 minutes will be required to present his or her case at an oral hearing, that Party must File with the Administrator, not less than 10 calendar days before the hearing date, a request for additional time and the reasons for the request, and must Serve a copy upon any other Party at the same time.
- (2) If a Party wishes to respond to another Party's request for additional time, he or she must File with the Administrator, not less than 7 calendar days before the hearing date, a response and the reasons for the response, and must Serve a copy on any other Party at the same time.
- (3) If, after considering an application under Rule 6(1) and any response under Rule 6(2), the Administrator determines that additional time will be allowed for a hearing, the Administrator will so advise the Parties, not less than 5 calendar days before the hearing date.
- (4) Despite Rules 6(1) to 6(3) above, the Administrator may allocate time in any manner he or she deems appropriate in the circumstances.

Rule 7 - Pre-hearing questions

- (1) If a Party has procedural questions regarding a case that is set for hearing, he or she may, at any time before the hearing, contact the Tobacco Control Program:
 - (c) by email at the following address: HLTH.TobaccoInfo@gov.bc.ca; or
 - (d) the Administrator in writing at 1515 Blanshard Street, 4-2, Victoria BC V8W 3C8.

The Party must provide copies of emailed or written questions to any other Party at the time of submission.

Rule 8 - Requests to reschedule a hearing (see Appendix D)

- (1) Except as provided in Rule 8(3), a Party may request that a hearing be rescheduled by Filing with the Administrator, and Serving a copy on any other Party, an application in the form set out in Appendix C to these Rules, or a letter containing the information required in Appendix C, not less than 2 calendar days before the hearing date
- (2) If a Party wishes to make submissions to the Administrator in response to a request Filed under Rule 8(1), he or she must File those submissions with the Administrator, and Serve a copy on any other Party, within 24 hours of receiving a copy of the application.
- (3) If a Party wishes to request the rescheduling of a hearing on less than 2 calendar days' notice, that Party must File the request with the Administrator and Serve a copy on any other Party. The Party requesting the delay must appear at the scheduled hearing in person or by counsel or agent and, at the commencement of proceedings, may make submissions concerning the request, the reasons for it and the reasons for the delay in making the request. Any other Party who wishes to respond will be given an opportunity to do so before the Administrator makes a decision concerning the request.

Rule 9 - Pre-hearing conferences

- (1) The Administrator will not generally hold pre-hearing conferences. The Administrator may, however, direct the Parties to participate in one or more pre-hearing conferences if the Administrator considers it necessary to do so in order to ensure an efficient and expeditious hearing.
- (2) If the Administrator decides to hold one or more pre-hearing conferences, the Administrator will issue a notice to the Parties, setting out:
 - (a) the date, time, and location or telephone number for each pre-hearing conference; and
 - (b) the pre-hearing conference agenda.
- (3) Decisions reached during a pre-hearing conference will be documented and copies circulated to the Parties.

PART III: HEARING PROCEDURE

Rule 10 - Presentation time at oral hearings

- (1) Unless an agreement has been reached under Rule 6, each Party should expect to present its case at the oral hearing in 90 minutes.

Rule 11 - Order of presentation at oral hearings

- (1) The order of presentation at an oral hearing will be as follows unless the Administrator specifies otherwise:

Opening Statements

- (a) Opening statement of Enforcement Officer;
- (b) Opening statement of Respondent(s)

Presentation of Evidence - Enforcement Officer

This will include testimony of the Enforcement Officer and any witnesses called by the Enforcement Officer. It will also include any supporting documentation and exhibits presented by the Enforcement Officer or provided by a witness as described in Rule 12.

Cross-Examination by Respondent(s)

Presentation of Evidence - Respondent(s)

This will include testimony of the Respondent(s), at the option of the Respondent(s), and any witnesses called by the Respondent(s). It will also include any supporting documentation and exhibits presented by the Respondent or provided by a witness as described in Rule 12. If multiple Respondents are to be heard, each will present their evidence in full before the next Respondent is heard.

Cross-Examination by Enforcement Officer

Submissions

- (a) Argument of the Enforcement Officer concerning the alleged contravention(s) and recommended penalty, if any;

- (b) Argument(s) of the Respondent(s) concerning the alleged contravention(s) and recommended penalty, if any.

Rule 12 - Evidence at hearings

- (1) The Administrator is not bound by the laws of evidence or the Rules of Court. The Administrator may, in his or her discretion, decide the relevance and admissibility of any evidence and the weight to be given to it.
- (2) Subject to Rule 12(4), the Enforcement Officer must:
 - (a) present only evidence concerning matters disclosed in the report Filed with the Administrator under Rule 1(1), or otherwise disclosed to the Respondent not less than 20 calendar days before the hearing date; and
 - (b) present only witnesses who have been identified in the report Filed with the Administrator under Rule 1(1), or otherwise disclosed to the Respondent not less than 20 calendar days before the hearing date.
- (3) Subject to Rule 12(4), the Respondent must:
 - (a) present only evidence directly related to the allegations identified in the Report to the Administrator that has been disclosed to all other Parties not less than 20 calendar days before the hearing date; and
 - (b) present only witness who have been disclosed to all other Parties not less than 20 calendar days before the hearing date.
- (4) The Administrator may admit testimony or other evidence that would otherwise be prohibited under Rule 12(2) or 12(3) if the Administrator is satisfied that:
 - (a) exceptional circumstances prevented the Enforcement Officer or the Respondent from complying with Rule 12(2) or 12(3); and
 - (b) allowing the introduction of that testimony or evidence will not, in the circumstances, prejudice the fairness of the hearing.

In admitting testimony or other evidence pursuant to this Rule, the Administrator may also grant an adjournment after a Party's presentation of the evidence, to provide the other Party or Parties with an opportunity to prepare a response.

- (5) If a Party objects to the hearing of testimony or the admission of other evidence, the Administrator may make a decision on the objection immediately, or may hear the testimony or admit the evidence and rule

on the objection in the course of rendering his or her decision in the matter.

- (6) The Administrator may ask questions of any Party or witness as the Administrator deems appropriate.
- (7) The Administrator may exclude any testimony the Administrator deems to be unduly repetitious.

Rule 13 - Written argument and authorities

- (1) If a Party wishes to submit written argument or case law for the consideration of the Administrator, the Party must first provide copies of such material to the Administrator and any other Party not less than 7 calendar days before the hearing date.

PART IV: AFTER THE HEARING

Rule 14 - Issuance and publication of decisions

- (1) The Administrator will issue a written decision to the Parties within 20 calendar days after the completion of a hearing date.
- (2) The Administrator will post a copy of his or her decision on the Administrator's website not less than 7 calendar days after the decision is issued to the Parties.
- (3) If an administrative penalty is imposed following a hearing, the Administrator will issue and deliver an administrative penalty notice in accordance with section 18 of the Regulation.

PART V: GENERAL

Rule 15 - How to File material with the Administrator

- (1) If a Party is required or permitted to File material with the Administrator under these Rules, the material may be Filed by:
 - (a) mailing it to the Administrator by registered or certified mail at: 1515 Blanshard Street, 4-2, Victoria BC V8W 3C8;
 - (b) faxing it to the Administrator at (250) 952-1570; or
 - (c) emailing it to the Administrator at: HLTH.TobaccoInfo@gov.bc.ca

Rule 16 - Service of documents on Parties

- (2) A Party required to Serve a document on another Party must do so by one of the following means, unless the Administrator directs otherwise:
 - (a) personal delivery;
 - (b) registered or certified mail to the Party's address as set out in the Hearing Notice;
 - (c) fax transmission to the last known fax number of the Party, but only if the document, inclusive of the cover sheet, does not exceed 40 pages, or, where longer, if the receiving Party consents;
 - (d) courier, including Priority Post, to a Party's address as set out in the Hearing Notice; or
 - (e) any other means, including electronic mail, authorized by the Administrator.
- (3) If the Administrator is required under these Rules to Serve documents on a Party, and if the manner of Service is not specified in section 7 or 18 of the Regulation, the Administrator must do so by one of the following means:
 - (a) personal delivery;
 - (b) registered or certified mail to the Party's address as set out in the Hearing Notice;
 - (c) fax transmission to the last known fax number of the Party;
 - (d) courier, including Priority Post, to a Party's address as set out in the Hearing Notice; or
 - (e) any other means, including electronic mail, authorized by the Administrator.
- (4) Service is deemed to take place on the date of actual delivery except as follows:

- (a) if Service by personal delivery, fax, courier or email before 4:30 pm on a Business Day, the date of Service is deemed to be the same day;
- (b) if Service is by personal delivery, fax, courier or email after 4:30 pm on a Business Day, or at any time on a day that is not a Business Day, the date of Service is deemed to be the next Business Day;
- (c) if Service is effected by mail, the document Served is deemed to be received on the fourth business day after mailing;
- (d) if any other means of Service is authorized or permitted by the Administrator, the date of Service is deemed to be the date specified in the Administrator's direction.

Rule 17 - Modification of Rules

- (1) The Administrator may modify any of these Rules in a particular case if he or she considers it appropriate to do so, provided that the modification is consistent with the Act and the Regulation.
- (2) The Administrator may make any other procedural orders he or she considers necessary.

PART VI: APPENDICES

Appendix A - Report to the Administrator



1. **Date of report :** [Type text]

2. **Name of Enforcement Officer :**

[Type text]

3. **Name(s) of person(s) alleged to have contravened the *Tobacco Control Act* (the "act"), the Tobacco Control Regulation (the "regulation") or an order of the Administrator**

[Type text]

4. **Contravener Details :**

Person

Salesperson [Type text]

Manager of Company [Type text]

Director of Company [Type text]

Type of Company

Choose an item.

Legal Name

[Type text]

Operational Name (Doing Business As)

[Type text]

Address

Address

Postal Code

Email Address

Phone Number

5. Tobacco Retailer Authorization #: [Type text]

6. Date(s) and time(s) of alleged contravention(s):

[Type text]

7. Section(s) of the act or regulation, or previous order of the Administrator, allegedly contravened:

Choose an item.

Choose an item.

Choose an item.

8. Has a ticket under the Violation Ticket Administration and Fines Regulation been issued for this alleged contravention?

Yes

No

9. Description of the alleged contravention(s):

[Type text]

10. Evidence to be relied upon at the hearing:

[Type text]

11. Witnesses expected to be called by the Enforcement Officer to testify at the hearing (name and role):

[Type text]

12. Enforcement history involving this retailer:

[Type text]

Appendix B – Request to Provide Legal Counsel and Availability
(see Rule 3)

Date: [Type text]

To: [Type text]

From: [Type text]

Re: Request to Provide Legal Counsel Information and Availability Dates

A Report to the Administrator of the Provincial *Tobacco Control Act* was submitted to the Administrator concerning the following alleged contravention(s):

Choose an item.

Choose an item.

Choose an item.

The alleged contravention(s) occurred on [Type text] at [Type text].

The Administrator has decided to proceed to a hearing concerning the alleged contravention(s). Before you receive a formal Notice of Hearing, the following information is required:

- 1) As provided for under Part 3 of the *Rules for Administrative Hearings under the Tobacco Control Act*, you may be represented by legal counsel or an agent at all pre-hearing conferences and at the hearing. If you have retained legal counsel, please provide their:
 - a. Name;
 - b. Address; and
 - c. Telephone and facsimile number.

- 2) As provided for under Section 7(2)(b) of the Tobacco Control Regulation, the administrative hearing will take place at a set date. Please advise of:
 - a. Availability dates for you and your legal counsel for a [month, year; e.g. January or February 2014] hearing.

We would like this information sent to the writer by [Type text] by [Type text] .If you do not provide the required information by the [Type text], we will schedule an administrative

hearing and you will receive a Notice of Hearing document with the scheduled hearing date, time, and location.

If you have questions, please contact the writer.

Appendix C – Notice of Hearing



Notice of Administrative Hearing *Tobacco Control Act, R.S.B.C. 1996, c. 451*

DATE: [Type text]

TO: [Type text]
(the "Respondent")

ATTENTION:

TO: [Type text]
(the "Respondent")

TAKE NOTICE THAT the Administrator, *Tobacco Control Act* (the "act"), has authorized the conduct of a hearing on:

[Type text]
at:
[Type text]

to determine whether the Respondent(s) have committed a contravention of the Act, the Tobacco Control Regulation (the "regulation") or an Administrator's order, and if so, whether an order will be made under section 6.1(2) of the act.

Section 6.1(2) of the act allows the Administrator to impose a **monetary penalty** on a person and/or to **prohibit a person from selling tobacco** for a period of time if satisfied, on a balance of probabilities, that the person has contravened a prescribed provision of the act or the regulation, or an order of the Administrator.

Allegation(s)

It is alleged that:

[Type text]

As provided by section 2(2) of the act, "A person must not sell, offer for sale, provide or distribute tobacco to an individual who has not reached the age specified by regulation under section 11 (2) (g)." The regulation provides, in section 2, that "the age for the purposes of section S.2 (2) of the Act is 19 years."

FURTHER TAKE NOTICE THAT if the Respondent fails to appear at the hearing or to provide submissions, the Administrator or the Administrator's delegate may proceed with the hearing and make an order imposing an administrative penalty on the Respondent without further notice.

Pursuant to section 5(2) of the act, the Administrator has delegated the authority to conduct this hearing by an Adjudicator.

The Respondent may be represented at the hearing by a lawyer or an agent. If the Respondent intends to be represented by a lawyer, please advise the Administrator's office of his/her name and contact information as soon as possible.

Evidence and Submissions

The Tobacco Enforcement Officer will provide to the Respondent, no later than 20 calendar days before the hearing:

- a copy of all documentary evidence and a description of all physical evidence, including photographs, which the Tobacco Enforcement Officer intends to submit in evidence; and
- a list of witnesses to be called by the Tobacco Enforcement Officer, together with a short summary of the evidence expected to be given by each witness.

If the Respondent intends to present any documentary or other evidence or to call any witnesses, the Respondent must:

Provide the following material to:

1. The Administrator
2. The Tobacco Enforcement Officer
3. The Adjudicator

no later than **20 calendar days** before the hearing:

- a copy of all documentary evidence and a description of all physical evidence, including photographs, which the Respondent intends to submit in evidence; and
- a list of witnesses the Respondent intends to call, together with a short summary of the evidence expected to be given by each witness.

Any material to be provided must be served on the Administrator at the following address, fax number or email address:

Address: Attention: Karen Parasram/Lee Scalzo
Tobacco Control Program
1515 Blanshard Street, 4-2
Victoria BC V8W 3C8
Fax: (250) 952-1570
Email: Tobacco.Info@gov.bc.ca

Any material to be provided must be served on the Tobacco Enforcement Officer at the following address, fax number (subject to Rule 16(1)(c)) or email address:

Address:
Fax:
Email:

Any material to be provided must be served on the Adjudicator at the following address, fax number or email address:

Address:
Fax:
Email:

Acceptable methods of delivery are set out in Rules 15 and 16 of the attached Rules.

Copies of the following are enclosed for your reference:

- Report to the Administrator
- the "Rules for Administrative Hearings under the *Tobacco Control Act*"
- the Act and Regulation

If you have questions regarding the hearing process, please contact Karen Parasram, Manager, Tobacco Control Program, by email at Tobacco.Info@gov.bc.ca.

Issued by:

Matt Herman, Administrator
Tobacco Control Act

pc.

Appendix D - Request to Reschedule a Hearing (see Rule 8)

Name of the Party applying to reschedule:

[Type text]

Names of any other Parties:

[Type text]

Scheduled date for the hearing:

[Type text]

Date (or date range) requested for rescheduled hearing:

[Type text]

Reasons for the request:
(Please enclose any supporting documentation)

[Type text]

Name

Signature

Date

Email Address

Phone Number

Address