

CHAPTER 233  
UNFAIR CIGARETTE SALES

Chapter rescission date pursuant to Iowa Code section 17A.7: 4/23/30

**701—233.1(421B) Definitions.** For purposes of this chapter, terms and phrases have the same meaning as defined in Iowa Code section 421B.2.

This rule is intended to implement Iowa Code section 421B.2.

[ARC 9041C, IAB 3/19/25, effective 4/23/25]

**701—233.2(421B) Minimum price.**

**233.2(1) *Cost to retailers or cost to wholesalers.*** The “cost to the retailer” and “cost to wholesaler” are defined in Iowa Code section 421B.2. The formulas for determining the cost to a wholesaler or retailer are not conclusive. The retailer, wholesaler, or the department may prove that the cost is either higher or lower.

**233.2(2) *Proving higher or lower than statutory presumption.***

*a.* The statutory presumptive cost must be used in determining minimum price until approval of the request to utilize another figure is granted by the department. If the requester continues to sell cigarettes at less than the presumptive cost, the department may revoke the requester’s permit or seek an injunction pursuant to Iowa Code section 421B.10 to prevent such action.

*b.* Any wholesaler or retailer who desires to prove that the wholesaler’s or retailer’s cost is less than the statutory presumptive cost computed according to Iowa Code chapter 421B may submit a petition for approval of a lower cost along with actual cost data to the department.

*c.* Any requester making sales of cigarettes in or into Iowa for more than 12 months shall submit cost data for the 12-month period ending no more than 30 days prior to the submission of the petition. Any requester making sales of cigarettes in or into Iowa for less than 12 months shall submit cost data for the period beginning with the start of business and ending no more than 30 days prior to the submission of the petition.

*d.* The department will notify the wholesaler or retailer of the acceptance or rejection of the petition. If the requester disagrees with the department’s determination, the requester may file an appeal within 60 days of the department’s decision in accordance with provisions of the “appeals” rule contained in 701—Chapter 7.

**233.2(3) *Costs of doing business.***

*a.* Costs of doing business include but are not limited to freight charges, labor, and equipment costs to affix stamps, ink, glue, permit fees, management fees, labor costs (including salaries of officers), rents, depreciation, selling costs, maintenance expenses, interest expenses, delivery costs, taxes, insurance, advertising expenses, and any other operational and administrative costs. The requester shall set forth the basis for allocated costs.

*b.* When the computed cost amounts to any fractional part of a cent, the cost must be rounded up to at least the next higher whole cent.

*c.* Sales made between wholesalers as provided for in Iowa Code section 421B.5, sales described in Iowa Code section 421B.6, and sales outside of the ordinary channels of trade as provided in Iowa Code section 421B.9 shall not be required to adhere to the minimum pricing requirements set forth in Iowa Code section 421B.3 and this rule.

**233.2(4) *Discounts.*** For purposes of determining the basic cost of cigarettes for wholesalers or retailers, trade or cash discounts may be deducted, if available, even though not taken. The discount taken or available must be clearly specified on the invoice or it will not be allowed as a reduction in the basic cost of cigarettes. Any financial incentive given to a wholesaler or retailer by a manufacturer at a later date will not reduce the basic cost of cigarettes.

**233.2(5) *Example.*** The following example will demonstrate the application of Iowa Code chapter 421B and this rule.

Per thousand cigarettes:

|  |                  |
|--|------------------|
| Manufacturer cost  | \$149.9500       |
| Minus 2% discount  | - 2.9990         |
| Plus ½ of the tax  | + <u>34.0000</u> |
|  | =                |
| Basic cost of cigarettes   | \$180.9510       |
| Plus 4% of basic cost  | + <u>7.2380</u>  |
|  | =                |
| Retailer's basic cost  | \$188.1890       |
| Plus ½ of the tax  | + <u>34.0000</u> |
| Per 1,000 cigarettes: Wholesaler Minimum price to retailer                   | =<br>\$222.1890  |
| Per carton (10 packs of 20 cigarettes): Wholesaler Minimum Price to Retailer | \$44.44          |
| Minus ½ state tax  | - <u>6.80</u>    |
| Retailer's basic cost  | \$37.6400        |
| Plus 8% of basic cost  | + 3.0112         |
| Plus ½ of state tax  | + <u>6.8000</u>  |
|  | =                |
| Minimum cost per carton to retailer  | \$47.4600        |
|  | \$4.75/<br>pack  |

This rule is intended to implement Iowa Code sections 421B.2, 421B.3, 421B.5, 421B.6 and 421B.9.  
[ARC 9041C, IAB 3/19/25, effective 4/23/25]

**701—233.3(421B) Combination sales.**

**233.3(1) Additional items sold with cigarettes.** Whenever cigarettes and another item are offered for sale at a total combined price, the sales price shall not be lower than the “cost to wholesaler” or “cost to the retailer” of all articles sold. The “cost to wholesaler” or “cost to the retailer” of all of the articles sold on a combined basis is determined under Iowa Code section 421B.2(1), 421B.2(3), and 421B.2(4).

**233.3(2) Promotional gifts.** If a promotional gift is given to the wholesaler or retailer by a cigarette manufacturer at no cost, which gift is to be given to consumers at no cost upon the sale of cigarettes, the minimum sales price will not be affected. The invoice cost of the promotional gift is zero, and therefore, the “cost to wholesaler” or “cost to the retailer” of the promotional gift is zero. If, however, the wholesaler or retailer were to purchase items to be given away with the purchase of cigarettes by consumers, the minimum sales price would increase. The “cost to wholesaler” or the “cost to the retailer” of the promotional item would be based upon the lower of invoice cost or replacement cost.

This rule is intended to implement Iowa Code section 421B.4.  
[ARC 9041C, IAB 3/19/25, effective 4/23/25]

**701—233.4(421B) Retail redemption of coupons.** The redemption of coupons by retailers, which coupons were supplied to consumers by manufacturers and will be redeemed from the retailers by the manufacturers, does not affect the minimum sales price of cigarettes. The retailer is still receiving the statutory minimum price even though that price is paid by two different persons, the consumer and the manufacturer. Manufacturer incentives to the consumer in lieu of a coupon that reduce the cost of the cigarettes to the consumer do not affect the minimum sales price of cigarettes when the manufacturer absorbs the loss for the incentive.

This rule is intended to implement Iowa Code section 421B.3.  
[ARC 9041C, IAB 3/19/25, effective 4/23/25]

**701—233.5(421B) Promotions using cigarettes, noncigarettes, or coupons.**

**233.5(1)** *Promotions using cigarettes, noncigarettes or coupons generally.* Promotional situations are specifically covered by Iowa Code section 421B.4. A promotional situation as described in Iowa Code section 421B.4 is valid provided it is a promotion scheme complying with the procedural requirements that it be a sale.

**233.5(2)** *Promotion using cigarettes.* If a manufacturer wants to run a promotion where two packs of cigarettes are sold for the price of one, the manufacturer could give the complimentary cigarettes to a distributor to be stamped that would then give the complimentary cigarettes to a retailer who gives the complimentary cigarettes away with the purchase of another pack. Provided the distributor is reimbursed for the cost of the tax stamps, there is no violation of Iowa Code chapter 421B by anyone. The following example illustrates what a manufacturer can do.

EXAMPLE: A manufacturer ships packs of 20, free of charge, to a permitted distributor with instructions to stamp them and send them to retail outlets or deliver them to one of the manufacturer's employees. The manufacturer reimburses the distributor for the cost of stamping the cigarettes. The manufacturer sends or furnishes instructions and display materials to retailers for the retail distribution of the cigarettes. This method of distribution would be proper.

The cost provisions of Iowa Code section 421B.4 would not prevent the distribution of cigarettes in this example since Iowa Code section 421B.4 is silent with respect to below cost combination sales by manufacturers. The cost of cigarettes that are sold is controlled by Iowa Code section 421B.2. The cigarettes sold under the "buy one" portion of the promotion will have a cost of the lower of the true invoice or the lowest replacement cost. The cigarettes sold under the "get one free" portion of the promotion and that were obtained free of charge will have no invoice cost to the retailer.

**233.5(3)** *Promotions using noncigarette items.* A manufacturer wants to give away promotional items with the purchase of cigarettes at the regular price. Since Iowa Code section 421B.4 is silent with respect to below cost combination sales by manufacturers, the practice of the manufacturer providing a gift item, such as cigarette lighters, through wholesale channels to retailers that will be delivered to the customer at the time of the sale of the cigarettes does not violate Iowa Code chapter 421B.

**233.5(4)** *Coupons.* A manufacturer distributes coupons to the general public to allow the purchase of cigarettes at a reduced price. Provided it is the manufacturer who absorbs the entire cost of the reduction in price, there would be no violation of Iowa Code chapter 421B. Coupons that are sent to the final consumer to be redeemed by a retailer that is reimbursed by a manufacturer do not violate Iowa Code chapter 421B. This would be true even though the coupon represented the full price of the cigarettes.

This rule is intended to implement Iowa Code chapter 421B.

[ARC 9041C, IAB 3/19/25, effective 4/23/25]

**701—233.6(421B) Notification of manufacturer's price increase.** For purposes of determining the "cost to the retailer" and the "cost to wholesaler," all manufacturers dealing with Iowa permittees shall notify the department in writing within five working days of the effective date of any change in the manufacturer's list price for cigarettes.

This rule is intended to implement Iowa Code sections 421B.8 and 421B.11.

[ARC 9041C, IAB 3/19/25, effective 4/23/25]

**701—233.7(421B) Sanctions for violations.**

**233.7(1)** *Civil penalties.* Violations of Iowa Code chapter 421B and this chapter will result in penalties as identified in Iowa Code section 421B.3.

**233.7(2)** *Permit revocation or suspension generally.* The department may revoke or suspend any permit issued under Iowa Code chapter 453A, subchapter I, for any violation of Iowa Code chapter 421B. The authority to revoke or suspend a retail cigarette permit for a violation of Iowa Code chapter 421B rests in the department even though the permit was issued by a city or county. The revocation or suspension shall be effectuated under the provisions of the "contested case proceedings" and "licenses" rules contained in 701—Chapter 7.

**233.7(3)** *Waiting period.* Once the permit is revoked or suspended, the permittee cannot obtain another cigarette permit, nor may a permit be issued for the location covered by the revoked or suspended permit, regardless of the identity of the applicant, for a period of at least six months.

This rule is intended to implement Iowa Code section 421B.11.

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