

**701—84.2 (421B) Minimum price.** The formula for determining the “cost” to a wholesaler or retailer as defined in Iowa Code section 421B.2 is not conclusive. The retailer, wholesaler or the department may prove that the “cost” is either higher or lower.

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 the Iowa unfair cigarette sales Act, Iowa Code chapter 421B, shall submit a petition for approval of a lower cost along with actual cost data to the department of revenue. The statutory presumptive cost must be used in determining minimum price until approval has been 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.

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. The department shall 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 a protest within 60 days of the department’s decision in accordance with rule 701—7.8(17A).

Costs of doing business shall 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. When the computed cost amounts to any fractional part of a cent, the cost must not be less than the next higher cent. However, 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. See rule 84.5(421B).

**84.2(1) Wholesaler’s cost of cigarettes.** The statutory method for determining the wholesaler’s cost of cigarettes is as follows:

*a.* “Basic cost of cigarettes” equals the lowest of true invoice cost, or lowest replacement cost, less trade or cash discounts plus one half of the state cigarette tax.

*b.* “Cost to wholesaler” equals the basic cost of cigarettes plus 3 percent of the basic cost plus the one half of the state cigarette tax not already included.

**84.2(2) Retailer’s cost of cigarettes.** The statutory method for determining the retailer’s cost of cigarettes is as follows:

*a.* “Basic cost of cigarettes” equals the lower of either true invoice cost exclusive of state cigarette tax or lowest replacement cost exclusive of state cigarette tax, minus trade or cash discounts plus one half of the state cigarette tax.

*b.* “Cost to retailers” equals the basic cost plus 3 percent of the basic cost, to the extent the retailer is allowed discounts ordinarily allowed wholesalers, plus 6 percent of the basic cost, plus the one half of the state cigarette tax not already included.

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.

The following example will demonstrate the application of this rule.

Manufacturer's list price per 1000 cigarettes	\$115.70
Invoice price to wholesaler	\$115.70
Less 2% discount	2.31
Plus ½ of the tax	<u>9.00</u>
Basic cost of cigarettes	\$122.39
Plus 3% of basic cost	<u>3.67</u>
Retailer's basic cost	\$126.06
Plus ½ of the tax	<u>9.00</u>
Minimum cost to wholesaler per 1000 cigarettes	\$135.06
Per carton	\$27.01
Less ½ state tax	<u>1.80</u>
Retailer's basic cost	\$25.21
Plus 6% of basic cost	1.51
Plus ½ of state tax	<u>1.80</u>
Minimum cost to retailer	\$28.52
Per pack	2.86/pack

This rule is intended to implement Iowa Code sections 421B.2, 421B.3, 421B.5, 421B.6 and 421B.9.

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