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§11–501.

(a) In this subtitle the following words have the meanings indicated.

(b) "Basic cost of cigarettes" means the lesser of the invoice cost or the replacement cost of cigarettes to the retailer or wholesaler; plus any in–freight charge to the wholesaler otherwise not included in the invoice cost or the replacement cost; plus, for the wholesaler, the full face value of any applicable Maryland cigarette tax payable by the wholesaler; minus any trade discount or discount for cash.

(c) (1) "Cigarettes" means any size or shaped roll for smoking that is made of tobacco or tobacco mixed with another ingredient and wrapped in paper or in any other material except tobacco.

(2) "Cigarettes" does not include cigars.

(d) (1) "Cost to the retailer", subject to the special cost provisions of § 11–503 of this subtitle, means the basic cost of cigarettes to a retailer, which includes the cost to a wholesaler, plus a markup to cover his cost of doing business, which cost of doing business, in the absence of satisfactory proof of a lesser cost, is presumed to be 8 percent of the basic cost of cigarettes to him.

(2) As to each carton of 200 cigarettes, a fractional part of a cent equal to one–tenth of a cent or more in the cost to the retailer shall be rounded off to the next higher cent.

(e) (1) "Cost to the wholesaler", subject to the special cost provisions of § 11–503 of this subtitle, means the basic cost of cigarettes to a wholesaler, plus a markup to cover his cost of doing business, which cost of doing business:

(i) Includes the cartage cost to a retailer; and

(ii) In the absence of satisfactory proof of a lesser cost, is presumed to be 5 percent of the basic cost of cigarettes to him.

(2) As to each carton of 200 cigarettes, a fractional part of a cent equal to one–tenth of a cent or more in the cost to the wholesaler shall be rounded off to the next higher cent.

(f) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(g) "Replacement cost" means the cost per unit for which the cigarettes could have been bought by the wholesaler or retailer at any time within 30 days before the

date of sale by him if bought in the same quantity as his last purchase of the cigarettes.

(h) "Retail sale of cigarettes" includes any sale whereby cigarettes are sold for a valuable consideration, including an exchange or barter and a sale through a vending machine, made in the ordinary course of trade or the usual conduct of the seller's business to a purchaser for consumption or use other than resale.

(i) (1) "Retailer" includes any person engaged in the business of making retail sales of cigarettes within the State at a store, stand, booth, or concession, through vending machines, or otherwise.

(2) If the person is engaged in the business of making both retail sales of cigarettes and wholesale sales of cigarettes, the word only applies to the retail sales of cigarettes portion of the business.

(j) "Sell" includes advertise, offer to sell, or offer for sale.

(k) "Vending machine operator" means a person who:

(1) Makes retail sales of cigarettes or has cigarettes in his possession with the intent to sell them exclusively at retail through the medium of a vending machine or any other mechanical device used for dispensing cigarettes;

(2) Owns, operates, and services vending machines or other mechanical devices used to dispense cigarettes on 40 or more premises; and

(3) Services the machines or devices by maintaining an established place of business for the purchase of cigarettes, including warehousing facilities for the storage and distribution of cigarettes.

(l) (1) "Wholesale sale of cigarettes" includes any sale whereby cigarettes are sold for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the seller's business to a retailer, other than to a vending machine operator or to a sub–wholesaler described in subsection (m)(2) of this section, for the bona fide purpose of resale.

(2) "Wholesale sale of cigarettes" includes any transfer of cigarettes on consignment or otherwise, whereby title is retained by the seller as security for the payment of the purchase price.

(m) (1) "Wholesaler" means a person who purchases cigarettes directly from a manufacturer.

(2) "Wholesaler" includes a person, who, as a sub–wholesaler:

(i) Purchases cigarettes from another wholesaler solely for the purpose of bona fide resale to retailers other than those directly or indirectly owned, affiliated, or controlled by him; and

(ii) Services the retailers by maintaining an established place of business for the sale of cigarettes, including warehouse facilities, adequate inventory, proper accounting records, and necessary equipment and vehicles for the storage and distribution of cigarettes.

(3) If the person is engaged in the business of making both wholesale sales of cigarettes and retail sales of cigarettes, the word only applies to the wholesale sales of cigarettes portion of the business.

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