

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-7-1-27

Rule Title: Non-participating Manufacturer's Bond (including Importers, if Applicable)

XX New; \_\_\_ Amend; \_\_\_ Repeal; \_\_\_ Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?

No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?

Yes

Is there another, less restrictive method of regulation available that could adequately protect the public?

No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule?

N/A

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?

Yes

\*\*\*\*\*

Does the proposed rule have any economic impact?

Yes

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

\*\*\*\*\*

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer 

Date 6/20/14

APA-6  
10/96

**ECONOMIC IMPACT STATEMENT  
FOR APA RULE  
(Section 41-22-23(f))**

Control No. 810 Department or Agency REVENUE

Rule No: 810-7-1-.27

Rule Title: Non-participating Manufacturer's Bond (including Importers, if Applicable)

New  Amend  Repeal  Adopt by Reference

NO

This rule has no economic impact.

YES

This rule has an economic impact, as explained below:

1. **NEED/EXPECTED BENEFIT OF RULE:**  
The rule is needed to implement a bond requirement which must be adhered to by tobacco products manufacturers which did not sign off on the tobacco Master Settlement Agreement. Non-participating manufacturers (NPMs) are required to deposit monies into an escrow account based on its cigarette sales/distributions into Alabama. If the NPM distributes cigarettes into the State, either directly or indirectly, and fails to deposit the required funds into escrow based on those sales/distributions, the State would have a mechanism to obtain payment by filing a claim against the posted bond. The NPM and its brands would also be removed from, or not listed on, the Directory of Cigarettes Approved for Stamping and Sales in Alabama, if the bond is not posted, making the NPM's cigarettes illegal for sale in this State.
2. **COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:**  
See item numbers 1 and 7.
3. **EFFECT OF THIS RULE ON COMPETITION:**  
N/A
4. **EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:**  
N/A
5. **EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:**  
N/A

6. **SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:**  
Appropriations
  
7. **THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:**  
Non-participating manufacturers and importers, if applicable, will not have their name and brand(s) included in Alabama's Directory of Cigarettes Approved for Stamping and Sale if a bond is not obtained and provided to the Alabama Department of Revenue each quarter. There could possibly be an increase in revenue if the non-participating manufacturer or importer fails to deposit, or fails to timely deposit, the appropriate funds into escrow by the due date. Should this occur, the State would go against the established bond for payment of the escrow amount, penalties or any other charges. Amounts collected on a bond would be deposited into the General Fund for the benefit of the State.  
  
NPMs who did not sign the tobacco Master Settlement Agreement would be responsible for the cost of the bond, which would ensure quarterly payments for cigarettes sold/distributed into the State. The State of Alabama would benefit from the rule in that the NPM's bond would cover its tobacco escrow deposit, and the State would have a source for recouping monies which are due to be paid into escrow if the NPM defaults on its required escrow payments. Having this rule in place, which implements the bond form, shows Alabama's diligent enforcement efforts in administering the State's tobacco escrow provisions, complementary legislation and 2003 Arbitration Settlement Agreement between Alabama and the participating manufacturers (PMs) that signed the Master Settlement Agreement. Promulgation of this rule to implement this bond requirement will assist the State in ensuring that Alabama continues to receive payments from tobacco products manufacturers that signed off on the Master Settlement Agreement (MSA).
  
8. **UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:**  
N/A
  
9. **THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:**  
Same as # 10 below.
  
10. **DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:**  
If the rule is not implemented, noncompliant NPM companies could

sale/distribute cigarettes into Alabama without depositing the required payments into escrow and the State could lose millions of dollars due to the NPM adjustment allowed to PMs if it is determined that Alabama did not diligently enforce the MSA.

11. OTHER COMMENTS:

APA-2  
11/96

**ALABAMA DEPARTMENT OF REVENUE  
Business & License Tax Division**

**NOTICE OF INTENDED ACTION**

**RULE NO. & TITLE**

810-7-1-.27                      Non-participating Manufacturer's Bond (including Importers, if Applicable)

**INTENDED ACTION:**        Adopt new rule

**SUBSTANCE OF PROPOSED ACTION:** The department proposes to adopt the above rule to comply with the provisions of Act 2014-341. Act 2014-341 requires manufacturers who did not sign off on the tobacco Master Settlement Agreement and who distribute their cigarettes into the State, to quarterly post a bond in the amount of their required escrow payment or \$25,000, whichever is greater. This rule would implement the procedures and form which will be used to execute said bond.

**RULE NO. & TITLE**

810-7-1-.28                      Wholesaler's and Distributor's Schedule D Reporting of Cigarette Sales to Federally-Recognized Indian Tribes Relating to the Escrow Provisions and MSA Complementary Legislation

**INTENDED ACTION:**        Adopt new rule

**SUBSTANCE OF PROPOSED ACTION:** The department proposes to adopt the above rule to require tobacco wholesalers and distributors to show on the Schedule D report, all sales of cigarettes and RYO tobacco products made to federally-recognized Indian Tribes. It further provides for procedures whereby a Non-Participating manufacturer may reduce its escrow payments when the cigarettes and RYO products are consumed on reservation land by a federally-recognized documented tribal member.

**TIME, PLACE, MANNER OF PRESENTING VIEWS:** A public hearing will be held at **2:00 p.m. on Wednesday, August 6, 2014, Room 1203, First Floor, Gordon Persons Building**, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at [www.revenue.alabama.gov/rulehear.html](http://www.revenue.alabama.gov/rulehear.html).

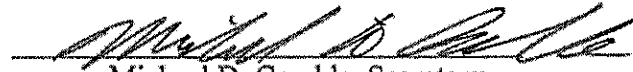
All interested parties may present their views in writing to the **Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time during the thirty-five (35) day period following publication of the notice or by appearing at the hearing.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

Wednesday, August 6, 2014

**CONTACT PERSON AT AGENCY:**

Patricia Toles  
Alabama Department of Revenue  
4131 Gordon Persons Building  
Montgomery, Alabama 36132  
(334) 242-1380



Michael D. Gamble, Secretary  
Alabama Department of Revenue

0931APC.INT

810-7-1-.27 Non-participating Manufacturer's Bond (including Importers, if Applicable).  
**(NEW RULE)**

(1) Pursuant to Act No. 2014-341, which amends Title 6, Chapters 12 and 12A, Code of Alabama 1975, any non-participating manufacturer (or importer, if applicable) wishing to be considered for listing on Alabama's Directory of Cigarettes Approved for Stamping and Sale shall first obtain and provide the required bond each quarter to the Alabama Department of Revenue.

(2) The bond must be a good and sufficient bond executed by a surety company licensed and authorized to do business in Alabama and shall be conditioned to pay the escrow requirement as well as any penalties or other charges under Title 6, Chapters 12 and 12A.

(3) The non-participating manufacturer's bond shall be posted for the benefit of the Commissioner, in accordance with the provisions of Section 6-12A-5 (f), and it shall be conditioned that the non-participating manufacturer shall fully comply with the escrow obligations.

(4) A bond is due for each calendar quarter. The bond shall be posted or otherwise due at least 10 days in advance of each calendar quarter as a condition to the non-participating manufacturer (or importer, if applicable) and its brand families being included in Alabama's Directory of Cigarettes Approved for Stamping and Sale for that quarter. The first bond is due by December 20, 2014 for the first quarter of 2015.

(5) The amount of the bond shall be the greater of:

(a) the greatest required escrow amount due from the non-participating manufacturer or its predecessor for any of the 12 preceding calendar quarters or

(b) \$25,000.

(6) Failure to timely provide the bond in strict compliance with subsection (f) of Section 6-12A-5 and the regulations relating thereto, shall result in the non-participating manufacturer's (or importer, if applicable) name and brand(s) not being included in, or deleted from, Alabama's Directory of Cigarettes Approved for Stamping and Sale.

(7) If a non-participating manufacturer that posted a bond has failed to make or have made on its behalf deposits equal to the full amount owed for a quarter within 15 days following the due date for the quarter under subsection (e) of Section 6-12A-5, the Commissioner may execute a claim upon the bond in the amount equal to any remaining amount of the escrow due including any applicable penalties or other charges allowable by law.

(8) Amounts the Commissioner or the State collects on a bond shall be deposited into the General Fund for the benefit of the State and shall reduce the amount of escrow due from that non-participating manufacturer. Escrow obligations above the amount collected on the bond

remain due from that non-participating manufacturer and any importer liable as provided in Subsection (b) of Section 6-12-3.

(9) The bond executed by the surety company on behalf of the non-participating manufacturer (or importer, if applicable) shall provide the following information:

(a) The true legal name of the party for whom a bond is being sought.

(b) The company name on the bond must match the name on the non-participating manufacturer's Escrow certification and Tobacco Products Manufacturer's (TPM) certification.

(c) The city, state, zip/country code and country in which the non-participating manufacturer (or importer, if applicable) is located.

(d) The name and address of the surety company providing the coverage.

(e) The issue date of the bond.

(e) The original signatures of the principal (company), agent of the surety company, and Alabama resident agent.

(f) The bond must be accompanied by an original power of attorney, indicating that the agent is authorized to execute the bond on behalf of the surety company.

(g) The bond and power of attorney must have the same issue date.

(h) The telephone number of the surety company.

(i) The bond number assigned by the surety company.

Author: Loretta Nelson

Authority: Sections 40-2A-7(a) (5), 6-12A-3, 6-12A-5 and 6-12A-7(d), Code of Alabama 1975

History:



APPENDIX DIVISION

FORMS

CHAPTER 810-7-1

Manufacturer Bond/Importer Bond - TOB: NPM BOND (4/14)

Rule 810-7-1-.27 Non-participating Manufacturer's Bond (include Importers, if  
Applicable)



ALABAMA DEPARTMENT OF REVENUE  
 BUSINESS & LICENSE TAX DIVISION  
 TOBACCO TAX SECTION  
 P.O. Box 327555 • Montgomery, AL 36132-7555 • (334) 242-9627

TOB: NPM BOND  
 4/14

**Manufacturer Bond**  
 **Importer Bond**

Bond Number \_\_\_\_\_

1. (Jan.-Mar.)     2. (Apr.-Jun.)     3. (Jul.-Sept.)     4. (Oct.-Dec.)

Year \_\_\_\_\_

Check Applicable Quarter

KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_  
COMPANY NAME

of \_\_\_\_\_, as Principal, and  
STREET ADDRESS/CITY/STATE/ZIP/POSTAL CODE/COUNTRY

\_\_\_\_\_, a Corporation organized  
SURETY COMPANY NAME

under the laws of the State of \_\_\_\_\_, duly authorized to transact business in the State of Alabama, as Surety, are held and firmly bound unto the State of Alabama in the sum

of \_\_\_\_\_ (\$ \_\_\_\_\_), lawful money of the United States of America, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is this:

**WHEREAS**, the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer or importer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the quarter in question, under the provisions of the **Code of Alabama 1975**, Sections 6-12-3 and 6-12A-5 a non-participating manufacturer/importer shall post a bond for the benefit of the commissioner, in accordance with the provisions of 6-12A-5(f), which is conditioned that the non-participating manufacturer/importer shall fully comply with the escrow obligations.

**AND WHEREAS**, the bond shall be posted at least 10 days in advance of each calendar quarter as a condition to the non-participating manufacturer/importer and its brand families being included in the state Directory of Cigarettes Approved for Stamping and Sale in Alabama for that quarter. The amount of the bond shall be the greater of (i) the greatest required escrow amount due from the non-participating manufacturer/importer or its predecessor for any of the 12 preceding calendar quarters or (ii) \$25,000.

**NOW THEREFORE**, if a non-participating manufacturer/importer that posted a bond has failed to make or have made on its behalf deposits equal to the full amount owed for a quarter within 15 days following the due date for the quarter under subsection (e) of Section 6-12A-5, the commissioner may execute upon the bond in the amount equal to any remaining amount of the escrow due including any applicable penalties or other charges allowable by law. Amounts the commissioner or the State collects on a bond shall be deposited into the general fund for the benefit of the State and shall reduce the amount of escrow due from that non-participating manufacturer or importer in the amount collected. Escrow obligations above the amount collected on the bond remain due from that non-participating manufacturer and any importer liable as provided in Subsection (b) of Section 6-12-3.

The manufacturer/importer and the corporate surety, identified herein, waive any right or privilege that the State of Alabama must first start an action or otherwise exhaust remedies against either the manufacturer/importer or the corporate surety be-

fore pursuing such remedies. If the manufacturer/importer or the corporate surety breach any condition of this bond, the State of Alabama may pursue remedies against the manufacturer/importer and/or the corporate surety.

The Surety of this bond may be released and discharged from any and all liability to the State of Alabama accruing on said bond after the expiration of sixty days from the date upon which this Surety shall have filed with the Alabama Department of Revenue written request to be released and discharged; provided, however, that such request shall not operate to relieve, discharge, or release such Surety from any liability already accrued, or which shall accrue, before the expiration of said sixty-day period.

In the event that the corporate surety elects to cancel this bond, the manufacturer/importer must secure an alternative bond by the expiration of the aforementioned sixty (60) day period. Failure to secure a supplemental bond will result in immediate removal of the manufacturer/importer from the Directory of Cigarettes Approved for Stamping and Sale in Alabama. The manufacturer/importer and corporate surety shall remain liable for all obligations accrued prior to the effective date of the bond cancellation.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, at: (Surety complete address)

\_\_\_\_\_  
SURETY STREET ADDRESS/CITY/STATE/ZIP CODE

this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

IN THE PRESENCE OF:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Type Witness Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Type Witness Signature

\_\_\_\_\_  
Principal

BY \_\_\_\_\_  
Officer's Signature

\_\_\_\_\_  
Type Officer's Name and Title

\_\_\_\_\_  
Surety

BY \_\_\_\_\_  
Agent of Surety Company

\_\_\_\_\_  
Type Agent's Name

\_\_\_\_\_  
Surety Telephone Number

BY \_\_\_\_\_  
Alabama Resident Agent

\_\_\_\_\_  
Type Agent's Name

\_\_\_\_\_  
Type Agent's License Number