

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-7-1-28

Rule Title: 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

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-.28

Rule Title: 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

New Amend Repeal Adopt by Reference

- NO
 YES

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. **NEED/EXPECTED BENEFIT OF RULE:**
The rule is needed to implement new reporting requirements due to the amended definition of the term "units sold". The rule is needed and is expected to clarify how tobacco wholesalers and distributors are to report cigarette and roll-your-own tobacco products sales that are made to federally-recognized Indian Tribes which products may or may not ultimately be consumed by documented tribal members on the reservation land and how non-participating manufacturers may reduce their NPM escrow payments for such sales, as defined by the units sold definition.
2. **COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:**
The rule will ensure the State of Alabama is in compliance with the 2003 NPM Arbitration Settlement Agreement allowing for continued MSA payments from Participating Manufacturers.
3. **EFFECT OF THIS RULE ON COMPETITION:**
Non-participating Manufacturer's market share may decrease due to a possible reduction in cigarette and RYO sales to federally-recognized Indian Tribes, if they are not able to obtain appropriate documentation to substantiate a credit to offset their escrow payments.
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 will be required to make escrow payments on all cigarette and roll-your-own sales made to federally-recognized Indian Tribes. A non-participating manufacturer may take a reduction for sales made to documented tribal members of the federally-recognized Indian Tribe for products which were consumed on reservation tribal land by the documented federally-recognized tribal member, if it can provide appropriate documentation to substantiate a credit.

The State of Alabama will benefit from the rule in that escrow payments will be due and payable on cigarettes and RYO tobacco sold by the federally-recognized Indian Tribe to non-documented tribal members.
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:**
N/A
10. **DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:**
N/A
11. **OTHER COMMENTS:**
N/A

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.

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:

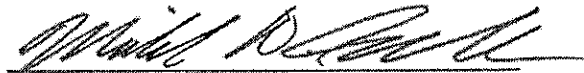
Patricia Toles

Alabama Department of Revenue

4131 Gordon Persons Building

Montgomery, Alabama 36132

(334) 242-1380



Michael D. Gamble, Secretary
Alabama Department of Revenue

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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. (NEW RULE)

(1) Act 2014-341 amends the tobacco escrow provisions and Master Settlement Agreement Complementary Legislation and became effective April 8, 2014. The Act further provides that the term "units sold" shall also include the number of individual cigarettes sold in the state by the tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as to which the state had power to under federal law, but did not, impose and/or collect excise tax. Without limiting the foregoing, this term specifically includes the following cigarettes, provided such cigarettes were not sold in a transaction that is exempted from Alabama taxation by federal statute or constitution:

(a) Cigarettes sold to a consumer without payment of the cigarette excise tax on the reservation lands of a federally-recognized Native American tribe,

(b) Cigarettes sold for retail sale in Alabama which were exempted from taxation pursuant to Chapter 9, Article 1 of Title 40 and/or any rule or regulation promulgated pursuant thereto, and

(c) Cigarettes sold by a seller located outside of Alabama directly to a consumer in this state, without payment of the cigarette excise tax, via mail order, telephone, internet, or other remote means.

(2) Tobacco wholesalers and distributors are required to report all cigarette and roll-your-own sales made to federally-recognized Indian Tribes on the Schedule D form according to Non-Participating Manufacturers' brands and Participating Manufacturers' brands.

(3) Solely for purposes of determining the amount of escrow required to be deposited by a Non-Participating Manufacturer pursuant to Ala. Code § 6-12-3, there shall be a rebuttable presumption that all cigarettes and roll-your-own tobacco distributed to Indian Tribes were ultimately sold to consumers in transactions not exempted from state taxation under federal law. Upon satisfactory proof that specific quantities of specific brands of cigarettes and/or roll-your-own tobacco were sold to consumers in transactions that were exempted from state taxation under federal law, the applicable Non-Participating Manufacturer may take a credit in the form of a reduction in the amount of escrow required to be deposited by the Non-Participating Manufacturer pursuant to Ala. Code § 6-12-3, in the amount of escrow corresponding to the quantity of exempt sales established by the applicable Non-Participating Manufacturer. The reduction is applicable only for sales made to documented tribal members of the federally-recognized Indian Tribe and which are consumed on reservation tribal land by the documented federally-recognized tribal member.

(4) Acceptable documentation to substantiate a credit provided for in (3) above includes copies of cigarette sales invoices, receipts, or other records establishing sales of specific quantities of specific brands of cigarettes and/or roll-your-own tobacco made on specific dates to federally-recognized tribal documented members where the tribal member resides on reservation land.

(5) Documentation must be maintained by the applicable Indian Tribe and/or Non-Participating Manufacturer to substantiate the credit or reductions and provided to the Department upon request; otherwise, the credit will be disallowed by the Department.

Author: Loretta Nelson

Authority: Sections 40-25A-7(a)(5) and 6-12-2, Code of Alabama 1975

History: