

APA1
07/04

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No. 281 Department or Agency: Department of Commerce

Rule No. 281-6-1

Rule Title: Alabama Renewal Act-Port Credit

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? N/A

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 an 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 Angela Hill

Date 11-15-16

(DATE FILED)
(STAMP)

APA-2
07/04

Alabama Department of Commerce

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Commerce

RULE NO. & TITLE: 281-6-1 Alabama Renewal Act – Port Credit

INTENDED ACTION: Adopt new rules.

SUBSTANCE OF PROPOSED ACTION: The Department of Commerce proposes to adopt rules for the award and administration of the Port Credit created under the Alabama Renewal Act as codified at Title 40, Chapter 18, Article 18 of Code of Alabama 1975.

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested parties may submit their views either orally or in writing to the Department of Commerce, 401 Adams Avenue, Suite 670, Montgomery, AL 36104, at any time prior to the date specified below, which is more than thirty-five (35) days following the publication of this notice.

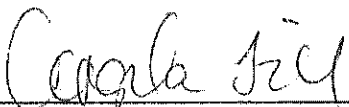
FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

January 5, 2017

CONTACT PERSONS AT AGENCY:

Greg Canfield
Secretary of Commerce
401 Adams Avenue, Suite 670
Montgomery, AL 36104
(334) 242-0421

William A. McCrary
401 Adams Avenue
Suite 749
Montgomery, Alabama 36104
(334) 242-7133



Angela Till

Deputy Secretary of Commerce

11-15-16

Date

APA6
07/04

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

Control No. 281 Department or Agency: Alabama Department of Commerce

Rule No: 281-6-1

Rule Title: Alabama Renewal Act-Port Credit

New Amend Repeal Adopt by Reference

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. **NEED/EXPECTED BENEFIT OF RULE:**
The adoption of these rules is intended to allow the Alabama Department of Commerce to effectively administer the Port Credit created under the Alabama Renewal Act as codified at Title 40, Chapter 18, Article 18 of the Code of Alabama 1975.
2. **COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:** **These rules are expected to provide for the effective administration of the Port Credit created under the Alabama Renewal Act as codified at Title 40, Chapter 18, Article 18 of Code of Alabama 1975.**
3. **EFFECT OF THIS RULE ON COMPETITION:** **There is anticipated to be no effect on competition between Alabama businesses within the State of Alabama, however Alabama as a State will be more competitive in the site selection process for new and expanding businesses.**
4. **EFFECT OF THIS RULE ON COST-OF-LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:** **There is anticipated to be no effect on the cost-of-living or doing business within the State of Alabama.**
5. **EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:** **It is anticipated that the implementation of these rules will promote increased usage of Alabama public ports thereby increasing jobs and other economic activity within the State of Alabama.**

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:
Application fee paid by applicants.

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:
In both the short term and long term these rules are expected to increase usage of Alabama public ports thereby increasing jobs and other economic activity within the State of Alabama.

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:
None.

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:
None.

"NEW CHAPTER"

ALABAMA DEPARTMENT OF COMMERCE

Chapter 281-6-1.

ALABAMA RENEWAL ACT-PORT CREDIT

TABLE OF CONTENTS

281-6-1.01	Definitions
281-6-1.02	Inland Ports
281-6-1.03	Base Cargo Volume
281-6-1.04	Applications; Fees
281-6-1.05	Allocations of Port Credits
281-6-1.06	Certification of Actual Cargo Volume
281-6-1.07	Port Credits Awarded by Project Agreement

Section 281-6-1.01 Definitions. In addition to the definitions contained in Section 40-18-400 of the Code of Alabama 1975, the following words and phrases used in Title 40, Chapter 18, Article 18 shall have the following meanings:

ACT. The Alabama Renewal Act, codified at Title 40, Chapter 18, Article 18 of the Code.

BASE CARGO VOLUME PERIOD. The 365-day period ending on the last day of the month immediately preceding the month in which an application for port credits is postmarked; provided that project agreements awarding port credits may specify a different Base Cargo Volume Period.

CODE. The Code of Alabama 1975, as amended.

PORT CREDIT INCENTIVE PERIOD. The 365-day period designated by an applicant on its application as the twelve-month period in which it is eligible to earn port credits as approved by the Commission; provided that the port credit incentive period shall begin no earlier than the first day of the month immediately following the date of the application and shall begin no later than ninety days following the date of the application. Notwithstanding the foregoing, project

agreements awarding port credits may specify a port credit incentive period beginning on any date.

PORT OF ENTRY. A port facility located in the State that is described in 19 C.F.R. § 101.3(b)(1).

PUBLICLY OWNED. A facility located in the State that is owned by the State, an agency of the State, a public corporation, a municipality, a county or any combination thereof.

Author: Department of Commerce

Statutory Authority: Code of Ala. 1975. §40-18-402(1).

History: New Rule: Filed November 15, 2016

Section 281-6-1.02 Inland Ports.

(a) Publicly owned facilities seeking designation as an inland port must apply to the Commission for official designation as an inland port.

(b) A facility seeking designation as an inland port shall apply in writing on letterhead of the entity seeking designation and shall include the following information regarding the facility:

- (1) The owner of the facility
- (2) The address of the facility
- (3) Name of authorized contact person
- (4) Email address of authorized contact person
- (5) Telephone number of authorized contact person for facility
- (6) Boundaries of the physical area seeking designation
- (7) Narratives describing the following:

(A) The facility's vision to facilitate and process international and domestic trade,

(B) The facility's plan for strategic investment in multi-modal transportation assets, and

(C) The facility's plan for promoting value-added services as goods move through the facility and the supply chain.

(c) A facility seeking designation as an inland port may include such supporting documentation as it deems necessary or desirable.

(d) Applications should be submitted to the Commission in care of;

Alabama Department of Commerce
401 Adams Avenue, Suite 670
P.O. Box 304106
Montgomery, Alabama 36130-4106
Attn: Deputy Secretary of Commerce
Business Development Division

(e) The Commission shall notify the applicant in writing of its decision when made.

Author: Department of Commerce

Statutory Authority: Code of Ala. 1975. §40-1-401, §40-18-402(1) and §40-18-403.

History: New Rule: Filed November 15, 2016

Section 281-6-1.03 Base Cargo Volume.

(a) Calculations of base cargo volume shall be supported by records from the applicable port facility confirming the total amount of cargo volume for the applicable base cargo volume period, unless the applicant will be a new user of the port facility. In the case of a new user of a port facility, the applicant's base cargo volume shall be the amount specified in Section 40-18-400(1)b. of the Code.

(b) Only cargo that is owned by the port facility user at the time the port facility is used may be included in the calculation of base cargo volume.

Author: Department of Commerce

Statutory Authority: Code of Ala. 1975. § 40-18-401, §40-18-402(1) and §40-18-403.

History: New Rule: Filed November 15, 2016

Section 281-6-1.04 Applications; Fees.

(a) Port facility users seeking to obtain port credits may file an application on a form prescribed by the Commission.

(b) Applications will be accepted on any date on or after September 1, 2016 until no additional port credits are available.

(c) Applications shall be accompanied by an application fee in the amount set forth in the application. Application fees are nonrefundable.

(d) Applications are deemed filed on the date they are postmarked.

Author: Department of Commerce

Statutory Authority: Code of Ala. 1975. § 40-18-401, §40-18-402(1) and §40-18-403.

History: New Rule: Filed November 15, 2016

Section 281-6-1.05 Allocations of Port Credits.

(a) Port credit allocations are awarded by the Commission pursuant to procedures adopted by the Commission.

(b) Awards of port credit allocations by the Commission are conditional. Credits are earned based upon actual cargo volume transiting the applicable port facility during the port credit incentive period and subsequent certification of actual cargo volume, all in compliance with the Act and these regulations. Once earned, port credits may be carried forward to future years as provided in the Act. Unearned port credits revert to the State.

Author: Department of Commerce

Statutory Authority: Code of Ala. 1975. § 40-18-401, §40-18-402(1) and §40-18-403.

History: New Rule: Filed November 15, 2016

Section 281-6-1.06 Certification of Actual Cargo Volume.

(a) Within 90 days of the end of the Port Credit Incentive Period, the port facility user shall file certification of cargo volume on a form prescribed by the Commission. Certifications

postmarked after this date shall be subject to a late certification fee in an amount equal to the port facility user's application fee.

(b) Calculations of actual cargo volume shall be supported by records from the applicable port facility confirming the total amount of cargo volume for the applicable base cargo volume period.

(c) Only cargo that is owned by the port facility user at the time the port facility is used may be included in the calculation of actual cargo volume.

Author: Department of Commerce

Statutory Authority: Code of Ala. 1975. § 40-18-401 and §40-18-403.

History: New Rule: Filed November 15, 2016

Section 281-6-1.07 Port Credits Awarded by Project Agreement.

(a) Section 40-18-403(e) of the Code provides that port credits may be allocated by the Governor and awarded by the Commission pursuant to a project agreement between the State and a port facility user. Award of port credits pursuant to a project agreement is an alternative method of seeking port credits for manufacturing or distribution projects investing at least \$20,000,000 at a single site and creating 75 net new jobs in Alabama. To the extent this section conflicts with other sections in this chapter, the provisions of this section shall control the process for obtaining port credits by project agreement.

(b) A port facility user seeking port credits for a project by project agreement may notify the Department of Commerce of its project utilizing the process outlined in Section 41-9-202.1 of the Code and include in their notification a request for an allocation of port credits; however, this notification process is not a mandatory prerequisite to obtaining port credits by project agreement.

(c) Port facility users seeking an award of port credits by project agreement shall file an application with the Commission on a form prescribed by the Commission for project agreement port credits prior to any Commission meeting but not in conjunction with a notification under subsection (b) of this Section.

(d) The Commission shall approve the actual port credit per unit of cargo volume applicable to each project agreement, subject

to execution and delivery of a project agreement. After reviewing each application, the Commission shall impose application fees for each application for port credits by project agreements on a case-by-case basis, and shall specify the applicable fee in its award of port credits to a port facility user. Approval of port credits may be made conditional on payment of the application fee.

(e) Notwithstanding Commission approval, a port facility user shall only become eligible to earn port credits by project agreement upon execution and delivery of a project agreement between the State and the port facility user.

Author: Department of Commerce

Statutory Authority: Code of Ala. 1975. § 40-18-401 and §40-18-403.

History: New Rule: Filed November 15, 2016