

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-8-1-.05

Rule Title: Flash Sales at the Terminal Allowed Under Specific Conditions

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

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Does the proposed rule have any economic impact?

No

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.

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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 *Michael D. Ruckel*

Date 9/22/14

APA-6  
10/96

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

Control No. 810 Department or Agency REVENUE

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X 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:
2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:
3. EFFECT OF THIS RULE ON COMPETITION:
4. EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:
5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:
6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:
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:
8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND

**BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE  
BENEFITS AND BURDEN COMPARISON:**

9. **THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:**
  
10. **DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:**
  
11. **OTHER COMMENTS:**

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

**NOTICE OF INTENDED ACTION**

**RULE NO. & TITLE**

810-8-1-.05                      Flash Sales at the Terminal Allowed Under Specific Conditions

**INTENDED ACTION:**        Adopt new rule


**SUBSTANCE OF PROPOSED ACTION:** The department proposes to adopt a new rule to clarify the taxation of flash sales at the terminal. A flash sale is a simultaneous purchase and resale of motor fuel as it leaves the terminal rack.

**TIME, PLACE, MANNER OF PRESENTING VIEWS:** A public hearing will be held at **3:30 p.m. on Wednesday, November 5, 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 [ww.revenue.alabama.gov/rulehear.html](http://ww.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, November 5, 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

810-8-1-.05 Flash Sales at the Terminal Allowed Under Specific Conditions. (NEW RULE)

(1) Flash sales occur when motor fuel is removed via tank truck or rail car from the terminal rack, when the position holder in the terminal sells to an entity that in turn, simultaneously sells the motor fuel at the terminal-loading rack. All parties involved in a flash sale must be properly licensed with the Alabama Department of Revenue.

(2) Section 40-17-326(a), Code of Alabama 1975, imposes an excise tax on motor fuel products as they are removed from the terminal using the terminal rack. The licensed supplier (position holder) is responsible for collecting the tax imposed under Title 40, Chapter 17, Article 12 from the person who orders the withdrawal at the rack.

(3) For flash sales, the licensed supplier (position holder) shall charge the applicable destination state excise tax on the rack removal of the motor fuel, provided the supplier (position holder) is licensed to remit the destination state taxes. The supplier/distributor who sells directly to the exporter in a flash sale must verify that the exporter is properly licensed in Alabama. If the exporter is not properly licensed, the applicable Alabama excise tax will be charged. The supplier selling the motor fuel is responsible for payment of the Alabama excise tax if the exporter is not properly licensed. The terminal issued bill of lading must show the sale of the motor fuel product(s) to the licensed exporter and the destination state. If the supplier (position holder) is not licensed to remit the excise tax to the destination state or the destination state does not permit the supplier (position holder) to charge the destination state tax, the Alabama excise tax will apply and the licensed exporter is responsible for applying for a refund and providing the necessary documentation.

(4) For flash sales in another state with the destination Alabama, the permissive supplier will collect the Alabama excise tax and the sale will be reported on a terminal rack removal schedule. The licensed importer will show the import of the motor fuel on the importer return.

(5) If the motor fuel is diverted from Alabama to another state, the licensed exporter/importer is responsible for obtaining the diversion number, applying for a refund, and providing the necessary documentation to prove that the destination state tax was paid.

Author: Bonita Calhoun  
Authority: Section 40-2A-7(a)(5) & 40-17-326, Code of Alabama 1975  
History: