

APA-1

Transmittal Sheet For Notice Of Intended Action

Control: 810

Department or Agency: Revenue

Rule Nos: 810-7-1-.31

Rule Title: Procedures for Disposition of Confiscated Tobacco Products

New; Amended; Repealed; Adopt by Reference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 result from the absence of the proposed rule? N/A

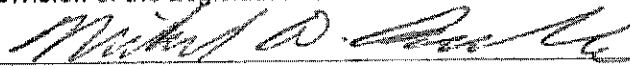
Are all the facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have any economic impact? 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.

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 04/17/2017

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-.31

Rule Title: Procedures for Disposition of Confiscated Tobacco Products

X 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:
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**

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-7-1-.31 Procedures for Disposition of Confiscated Tobacco Products

INTENDED ACTION: New


SUBSTANCE OF PROPOSED ACTION: The department proposes to adopt the above new rule to establish procedures for destroying confiscated tobacco products.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at **1:30 p.m. on Wednesday, June 7, 2017, Room 1203, First Floor**, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at <http://www.revenue.alabama.gov/analysis/rules.cfm>.

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 following publication of the notice up until the conclusion of the hearing. Interested parties may also appear at the hearing to present their views.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:
Wednesday, June 7, 2017

CONTACT PERSON AT AGENCY:
Timothy Sanders
Alabama Department of Revenue
4131 Gordon Persons Building
Montgomery, Alabama 36132
(334) 242-1380


Michael D. Gamble, Secretary
Alabama Department of Revenue

810-7-1-.31 Procedures for Disposition of Confiscated Tobacco Products (NEW RULE)

(1) Title 40, Chapter 25, Code of Alabama 1975, provides that tobacco products may be confiscated under the following circumstances by the Department of Revenue, or its agents or by any peace officer of the State of Alabama, without a warrant and the goods shall be delivered to the Department of Revenue for destruction:

(a) Section 40-25-7, Code of Alabama 1975, provides that tobacco products imported by retail dealers and semijobbers in which a true and duplicate invoice has not been received by the Department are considered contraband and subject to confiscation.

(b) Section 40-25-8, Code of Alabama 1975, provides that any cigarettes, smoking tobacco, cigars, stogies, cheroots, chewing tobacco, snuff, or other products taxable pursuant to Title 40, Chapter 25, Code of Alabama 1975, found within the State of Alabama, in possession of any retailer or semijobber not having affixed to the package of cigarettes the required stamps or in the case of other tobacco products, purchase invoices which itemize the applicable tobacco taxes are not available, are declared to be contraband goods and may be seized.

(c) Section 40-25-13, Code of Alabama 1975, provides that failure to acquire appropriate invoices, substantiate tax payment or retain invoices, as required, may result in confiscation of the tobacco products.

(d) Section 40-25-16.1, Code of Alabama 1975, provides that purchases of tobacco products from an entity other than permitted or registered entities appearing on the Department's web site listing shall be subject to confiscation.

(2) The following procedures shall be followed in all cases of seizure of tobacco products subject to forfeiture under provisions of Title 40, Chapter 25, Code of Alabama 1975:

(a) Cigarettes and Other Tobacco Products (OTP).

1. The officer or person making the seizure shall cause a list containing a particular description of the goods, wares, merchandise or other property seized to be prepared in duplicate. The list shall be properly attested by the officer or person.

2. The Department of Revenue shall post a notice of the items confiscated for three weeks on its web site describing the articles and stating the time and place and cause of their seizure and requiring any person claiming them to appear and make such claim in writing within 30 days from the date of the first posting of such notice.

3. Any person claiming the items seized as contraband must file with the Department of Revenue a claim in writing within 30 days from the date of the notice. The claim must state the person's interest in the items seized.

4. Claimants who wish to request the return of the confiscated product via circuit court, may execute a bond to the Department of Revenue in a penal sum equal to double the value of the goods so seized, but in no case shall the bond be less than the sum of \$200, with sureties to be approved by the clerk of the circuit court in the county in which the goods are seized, conditioned that in the case of condemnation of the articles so seized, the obligors shall pay to the Department of Revenue the full value of the goods so seized and all costs and expenses of the proceedings to obtain such condemnation, including a reasonable attorney's fee. Upon the delivery of such bond to the Department of Revenue, it shall transmit the same with the duplicate list or description of the goods seized to the district attorney of the circuit in which such seizure was made, and the district attorney shall file a complaint in the circuit court of the county where the seizure was made to secure the forfeiture of the goods, wares, merchandise or other property. Upon the filing of the bond, the goods shall be delivered to the claimant pending the outcome of the case; provided, that the claimant must purchase the proper stamps to be affixed to each package of cigarettes or in the case of other tobacco products remit the appropriate tax before the goods are delivered to the claimant by the Department of Revenue.

5. If no claim or bond is given within the time specified, such packages of cigarettes or other tobacco products shall be forfeited without further proceedings.

6. Unclaimed products for which an appeal has not been received by the Department shall be destroyed using means as determined by the Department of Revenue.

(b) Loose Cigarettes. Section 28-11-6, Code of Alabama 1975, prohibits the sale or distribution of cigarettes that are not sold in the original factory-wrapped container. The prohibition also applies to the sale of loose cigarettes or opened packages of cigarettes. Therefore, it shall be prima facie evidence that such cigarettes offered for sale which are not in the proper packaging shall be subject to confiscation and destruction.

1. The officer or person making the seizure shall cause a list containing a particular description of the loose cigarettes and/or opened packages of cigarettes seized to be prepared in duplicate. The list shall be properly attested by the officer.

2. The Department of Revenue shall post a notice of the items confiscated for three weeks on its web site describing the articles and stating the time and place and cause of their seizure.

3. In the event that the loose cigarettes do not contain the Fire Standards Compliant marking as required per Section 8-17-274, Code of Alabama 1975, the trademark holder of the loose cigarette brand shall be notified and permitted by the Department to inspect the cigarettes prior to destruction, upon written request.

4. Loose cigarettes and improper packages of cigarettes shall be destroyed using means as determined by the Department of Revenue.

(c) Motor vehicles. Per Section 40-25-8, Code of Alabama 1975, any vehicle, not a common carrier, used for the transportation for the purpose of sale of unstamped articles shall be subject to confiscation and sale at public auction to the highest bidder after due advertisement and notice to the title owner of the vehicle. Should any unstamped tobaccos be found in any vehicle which is engaged in the sale, distribution, or delivery of taxable tobaccos, the same shall be prima facie evidence that it was there for sale.

(3) Return of Product. Per Section 40-25-10, Code of Alabama 1975, the Department may in its discretion return any goods confiscated when it is shown that there was no intention to violate the provisions of Title 40, Chapter 25, Code of Alabama 1975. In the case of confiscated packages of cigarettes, any applicable state and/or county tax, to include the purchase of the appropriate tax stamps, interest and penalty, if applicable, must be remitted prior to the items being returned. OTP for which invoices substantiating the payment of the tax were not produced, loose cigarettes, and motor vehicles with unstamped tobaccos shall be prima facie evidence of intent to evade the tax. All such OTP product, loose cigarettes or motor vehicles will not be returned and shall be destroyed by the Department or sold at auction, if applicable, upon due process.

(4) Proceeds of Sale. The proceeds of sale when received by the Department of Revenue shall be turned in to the Treasury as other revenues are required by law to be turned in. The proceedings against goods, merchandise or other property shall be considered as proceedings in rem unless otherwise provided. Should the Department of Revenue have to resort to the courts for collection of the tax due and assessed, no advertisement shall be made and the confiscated tobaccos may be held as evidence pending the results of court action.

Author: Alisa G. Johnson.

Authority: Sections 40-2A-7(a)(5), 28-11-6, Chapter 25 of Title 40, and Chapter 17 of Title 8, Code of Alabama 1975.

History: