

APA-1

### Transmittal Sheet For Notice Of Intended Action

Control: 810

Department or Agency: Revenue

Rule Nos: 810-7-1-.14

Rule Title: Tobacco Product Manufacturers Certificate of Compliance

New;  Amended;  Repealed;  Adopt by Reference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 6/16/17 [Signature]

Date 06/15/2017

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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-.14

Rule Title: Tobacco Product Manufacturers Certificate of Compliance

           New   X   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 and License Tax**

**NOTICE OF INTENDED ACTION**

**RULE NO. & TITLE**

810-8-1-.66                      Inspection Fee Bond Calculation

**INTENDED ACTION:**              Repeal

**SUBSTANCE OF PROPOSED ACTION:** The department proposes to repeal the above rule due to the elimination of the bond requirement per Act 2017-296.

**RULE NO. & TITLE**

810-7-1-.14                      Tobacco Product Manufacturers Certificate of Compliance.

**INTENDED ACTION:**              Amend

**SUBSTANCE OF PROPOSED ACTION:** The department proposes to amend the above rule to correct code section reference.

**RULE NO. & TITLE**

810-8-5-.10                      State Boards and Agencies Registration Form  
810-8-5-.11                      Mechanism to be used to Notify Municipalities

**INTENDED ACTION:**              Amend

**SUBSTANCE OF PROPOSED ACTION:** The department proposes to amend the above rule in order to update the division name to Business and License.

**TIME, PLACE, MANNER OF PRESENTING VIEWS:** A public hearing will be held at **2:30 p.m. on Thursday, August 10, 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>.

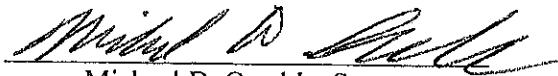
All interested parties may present their views in writing to the **Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time following publication of the notice up until the conclusion of the hearing. Interested parties may also appear at the hearing to present their views.

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

Thursday, August 10, 2017

**CONTACT PERSON AT AGENCY:**

Meagan Barrett  
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-.14. Tobacco Product Manufacturers Certificate of Compliance.

(1) As used in this rule, the following terms shall have these meanings:

(a) "Brand Family" means all styles of cigarettes sold under the same trade mark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, menthol, lights, kings, and 100s, and includes any brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(b) "Cigarette" has the same meaning as in Section 6-12-2(4), Code of Ala**bama** 1975.

(c) "Directory" means the listing of all Tobacco Product Manufacturers that have provided current and accurate certifications conforming to the requirements of Title 6, Chapter 12A, Code of Ala**bama** 1975, and all Brand Families that are listed in such certifications; except as provided by Section 6-12A-3(b), Code of Ala**bama** 1975.

(d) "Distributor" is a person, wherever resident or located, who purchases non-tax-paid cigarettes and stores, sells, or otherwise disposes of the cigarettes.

(e) "Master Settlement Agreement" means the settlement agreement, and related documents, entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

(f) "Nonparticipating Manufacturer" means any Tobacco Product Manufacturer that is not a Participating Manufacturer.

(g) "Participating Manufacturer" has the meaning given that term in Section II(jj) of the Master Settlement Agreement and all amendments thereto.

(h) "Qualified Escrow Fund" has the same meaning as in Section 6-12-2(~~67~~), Code of Ala**bama** 1975.

(i) "Tobacco Product Manufacturer" has the same meaning as in Section 6-12-2(~~910~~), Code of Ala**bama** 1975.

(j) "Units Sold" has the same meaning as in Section 6-12-2(~~1011~~), Code of Ala**bama** 1975.

(k) "Wholesaler" means a person, firm, corporation, club, or association that is authorized to affix tax stamps to packages or other containers of cigarettes under the provisions of Title 40, Chapter 25, Code of Ala**bama** 1975.

(2) Any tobacco product manufacturer that sells or intends to sell cigarettes within the state of Alabama, whether directly or through any distributor, retailer, or similar intermediary

must file a Tobacco Product Manufacturers Certificate (TPM Certificate) on the forms prescribed, with the Department of Revenue. This TPM Certificate is in addition to any Certificate of Compliance that may be required of Nonparticipating Tobacco Product Manufacturers pursuant to Title 6, Chapter 12, Code of Ala**bama** 1975.

(3) In 2003 only, the TPM Certificate must be received on or before September 15, 2003. In future years, the TPM Certificate must be received on or before April 30th for the previous sales year.

(4) On the TPM Certificate, the Manufacturer's identification must include the name, address, telephone number, fax number and electronic mail address. The Manufacturer must also identify the sales year, identify by Brands and/or Brand Families all of the cigarettes that the Tobacco Product Manufacturer intends to sell in this State whether directly or through any distributor, retailer, or similar intermediary, and seeks to have included in the Directory. Only the brands identified may be included in the Directory.

(5) A Participating Manufacturer shall include a list of its Brand Families on the TPM Certificate. The Participating Manufacturer shall update such list thirty calendar days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental certification to the Department.

(6) A Nonparticipating Manufacturer shall include in its TPM Certificate: (i) a list of all of its Brand Families and the number of Units Sold for each Brand Family that were sold in the State during the preceding calendar year, (ii) a list of all of its Brand Families that have been sold in the State at any time during the current calendar year, (iii) indicating, by an asterisk, any Brand Family sold in the State during the preceding calendar year that is no longer being sold in the State as of the date of such certification, and (iv) identifying by name and address any other manufacturer of such Brand Families in the preceding or current calendar year. The Nonparticipating Manufacturer shall update such list thirty calendar days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental certification to the Department.

(7) The Nonparticipating Manufacturer must verify that it is registered to do business in Alabama or has appointed an agent for service of process and provided notice thereof as required by Title 6, Chapter 12A, Code of Ala**bama** 1975. Identify (i) the name, address and telephone number of the financial institution where the Nonparticipating Manufacturer has established a Qualified Escrow Fund pursuant to Title 6, Chapter 12, Code of Ala**bama** 1975, and all regulations promulgated thereto; (ii) the account number of such Qualified Escrow Fund and any sub-account number for Alabama; and identify (i) the amount such Nonparticipating Manufacturer placed in such fund for Cigarettes sold in the State during the preceding calendar year, the date and amount of each such deposit; and (ii) the amount and date of any withdrawal or transfer of funds the Nonparticipating Manufacturer made at any time from such fund or from any other Qualified Escrow Fund.

(8) The person executing the TPM Certificate must be an authorized representative for the Tobacco Product Manufacturer. The authorized representative's name and title must be printed and the TPM Certificate must be executed in the presence of an authorized notary.

(9) On ~~or about~~ October 31, 2003, the Department of Revenue ~~will release~~ began releasing a Directory of those tobacco product manufacturers that are fully compliant with Alabama statutes. The Directory ~~will sets~~ forth the names of the compliant tobacco product manufacturers, together with the names of those brands and/or brand families of the respective manufacturers that have been certified by the Department as being fully compliant with Alabama law. Updates to the directory will be made as necessary to correct mistakes and to add or remove a tobacco product manufacturer or brand families to keep the Directory in conformity with its requirements. The Directory will be distributed to licensed stamping agents and will be made available to those stamping agents and the general public on an ongoing basis on the Department's website. Only those brands and brand families listed in the Directory will be permitted to be stamped for sale, offered for sale, possessed for sale or sold in the State of Alabama. Brands or brand families not listed in the Directory are contraband and subject to seizure by any law enforcement officer.

(10) Any Nonparticipating Tobacco Manufacturer that has not complied with Alabama Statutes by submitting its escrow payments and Certificates of Compliance will not be listed in the Directory until all past escrow payments are made, proof of payment is submitted to the State, all outstanding judgments are satisfied, and all other obligations are met.

Author: Loretta Nelson and Alisa Johnson.  
Authority: Sections 40-2A-7(a)(5) and 6-12A-7, Code of Alabama 1975.  
History: New Rule: Filed August 13, 2005, effective September 17, 2004.