

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF EXEMPT RULEMAKING

TITLE 15. REVENUE

CHAPTER 3. DEPARTMENT OF REVENUE – LUXURY TAX SECTION

Editor's Note: The following Notice of Exempt Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 526.) The Governor's Office authorized the notice to proceed through the rulemaking process on July 19, 2012.

[R13-29]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**

R15-3-301	Amend
R15-3-308	Amend
R15-3-317	New Section
R15-3-318	New Section
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific), and the statute or session law authorizing the exemption:**

Authorizing statute: A.R.S. § 42-1005(A)(1)
Implementing statute: A.R.S. § 42-3004
Statute or session law authorizing the exemption: Laws 2012, Ch. 311, § 12
- 3. The effective date of the rules and the agency's reason it selected the effective date:**

February 19, 2013.

Because the rules effectuate changes enacted in new legislation that has already become effective (as of August 2, 2012), the Department requests that the rules become effective on the date of filing in the Office of the Secretary of State, Public Services Division.
- 4. A list of all notices published in the Register as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:**

Not applicable
- 5. The agency's contact person who can answer questions about the rulemaking:**

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- 6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:**

The Department justifications and reasons for making or amending the four rules addressed by this Notice are as follows:

 - a. *R15-3-301*: The Department is amending its rule regarding the procedure for obtaining tobacco distributor licenses to account for the new bonding requirements enacted by Laws 2012, Ch. 311 (hereinafter referred to as "S.B. 1280") and now found at A.R.S. § 42-1102(B). The existing language refers applicants only to the licensing requirements

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found in A.R.S. § 42-3201(A).

- b. *R15-3-308*: Currently, subsection (A) provides that the Department may revoke or suspend a tobacco distributor's license under one of two circumstances: the licensee has violated some provision of A.R.S. Title 42 or 15 A.A.C. 3, Article 3, more than two times within a three-year period or the licensee has violated A.R.S. § 44-7111(6)(a). S.B. 1280 amended A.R.S. § 42-3201, the statute upon which the Department bases *R15-3-308(A)*, to specifically reference A.R.S. § 44-7111(6)(a) in A.R.S. § 42-3201(F) and a new violation found in A.R.S. § 36-798.06(A). Because A.R.S. § 42-3201(F) provides the list of all conditions under which the Department may not issue or renew a license and may revoke an existing license, the language in *R15-3-308* has been reworded so as to refer to A.R.S. § 42-3201(F) rather than separately to A.R.S. § 44-7111. Because A.R.S. § 42-3201(G) still provides the Department with a separate means of suspending or revoking a license based on a licensee violating a requirement more than two times within a three-year period, however, that reference in the rule will remain.
- c. *R15-3-317*: With the enactment of S.B. 1280, A.R.S. § 42-3201(I) now refers to certain tobacco products subject to seizure and destruction by the Department as contraband, for which taxpayers cannot report and remit Arizona tobacco taxes. The new statutory language highlights a discrepancy in treatment between products that the Department seizes but is not statutorily obliged to destroy and products that are contraband and, consequently, must be destroyed. The Department explains this difference in treatment in new *R15-3-317*, which explains that non-contraband products are subject to return to a licensee that prevails in an appeal of the Department's seizure action, and lists the specific circumstances under which the Department will destroy seized products.
- d. *R15-3-318*: With S.B. 1280's enactment, a new A.R.S. § 42-3008(C) provides that the Department will not refund tobacco tax for stamps affixed to articles that are deemed contraband (*i.e.*, tobacco products subject to seizure and destruction by the Department). Given this change to the general stamp refund and redemption procedure, the Department reasons that taxpayers would benefit from a new rule providing a unified discussion of stamped contraband products within the context of the general conditions for stamp refund and redemption that are currently found in the Department's *Arizona Luxury Tax Ruling LTR 04-1*.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact, if applicable:

This rulemaking is designed to notify tobacco distributor licensees of potential bonding requirements, license revocation and suspension criteria, the disposition of seized tobacco products, and stamp refund and redemption criteria. These are areas of critical concern to licensees and are issues that frequently arise in the context of questions to the Department. Violations of laws underlying this rulemaking can result in lost tax revenue, lost revenue to businesses engaged in lawful sales of tobacco due to illicit activity, and the increase of counterfeit or unlawful products in this state's marketplace. The Department does not have sufficient data to quantify the change in compliance expected from this rulemaking.

The Department, Attorney General's Office, State Fire Marshal's Office, and current and prospective holders of tobacco distributors licenses are parties the Department anticipates will be directly affected by this rulemaking. Overall, the benefits of clear, concise, and understandable rules, which unify current law and Departmental guidance in one document, will benefit all of these parties and outweigh any predicted costs associated with this rulemaking.

10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):

Not applicable

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:

Not applicable

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

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c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

13. A list of any incorporated by reference material and its location in the rule:

Not applicable

14. Whether the rule was previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 3. DEPARTMENT OF REVENUE - LUXURY TAX SECTION

ARTICLE 3. TAXES ON TOBACCO PRODUCTS

Section

R15-3-301. Licensing

R15-3-308. Revocation or Suspension of Distributor's License

R15-3-317. ~~Reserved~~ Disposition of Seized Tobacco Products

R15-3-318. ~~Renumbered~~ Refunds for and Redemption of Cigarette Tax Stamps

ARTICLE 3. TAXES ON TOBACCO PRODUCTS

R15-3-301. Licensing

- A.** An individual shall obtain a distributor's license before engaging in business as a distributor. The Department shall issue a distributor's license to the individual named in the license application for a business making the initial sale or distribution of tobacco products in this state, pursuant to the requirements of A.R.S. § 42-3201(A) and any applicable bonding requirements under A.R.S. § 42-1102(B). A licensee shall not transfer its distributor's license to a new owner when selling its business.
- B.** In cases of liquidation, insolvency, or bankruptcy where businesses remain in operation as distributors of tobacco products, court-appointed trustees, receivers, or others shall obtain distributors' licenses in their own names.
- C.** A licensee shall apply for a new distributor's license if it changes its legal entity or otherwise changes the legal structure of its business.
- D.** A licensee shall obtain a distributor's license for each business location that maintains an inventory of tobacco products and shall display the license in a conspicuous place at the business location.
- E.** Except as provided in subsection (F), the Department shall issue a license for a business location only if the business maintains any books, papers, invoices, records, and luxuries subject to the Department's inspection under A.R.S. § 42-3151 in a place and manner at the business location that is accessible to the Department during normal business hours without a judicial warrant or prior written consent of the licensee. For example, if a licensee or agent of the licensee also uses the business location for residential purposes, the licensee shall maintain its books, papers, invoices, records, and luxuries in a place and manner at the business location that does not require the Department to obtain a judicial warrant or written consent from the licensee or an agent of the licensee before conducting an inspection during normal business hours.
- F.** If a business maintains any books, papers, invoices, or records electronically, the Department shall issue a license for a business location only if the business provides access to the data for the Department's inspection at the business location, regardless of the storage location of the data. The business shall provide the access at the business location in a place and manner that is accessible to the Department during normal business hours without a judicial warrant or prior written consent of the licensee.
- G.** If an applicant remits payment of the licensee fee for its business location by cashier's check, company check, or money order, the payment shall bear one of the following:
1. The name of the applicant as the purchaser or remitter, if the payment is made by cashier's check or money order; or
 2. The name of the applicant as the drawer or maker, if the payment is made by company check.
- H.** Pursuant to A.R.S. §§ 42-3004(1) and 42-3201(B), the Department may request an applicant for a distributor's license to submit additional supporting documentation for the purpose of enforcing this Section.

R15-3-308. Revocation or Suspension of Distributor's License

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- ~~A.~~ The Department cannot issue or renew a distributor's license, and may revoke the existing license of a distributor, if any of the conditions listed under A.R.S. § 42-3201(F) applies.
- ~~A.B.~~ The Except as otherwise provided in A.R.S. § 42-3201 and this Section, the Department may revoke or suspend a license for either of the following:
- ~~1.~~ More more than two violations within a three-year period of any provision of A.R.S. Title 42 or this Article, pursuant to A.R.S. § 42-3201(G); or
 - ~~2.~~ Any violation described in A.R.S. § 44-7111, Section 6(a).
- ~~B.C.~~ The Department may revoke a license for any violation of A.R.S. § 42-3210(B)(1).
- ~~C.D.~~ The Department shall give written notice of a revocation or suspension to a licensee by delivering the notice to the licensee by certified mail, return receipt requested, to the licensee's business location or by personal service.
- ~~D.E.~~ The licensee shall request a hearing in writing within 30 days after receipt of the notice to appeal the revocation or suspension to the Department. If the notice is delivered by certified mail, return receipt requested, the licensee is presumed to have received notice upon the date shown on the return receipt signed by or on behalf of the licensee, or, if the receipt is unsigned, upon the date that the United States Postal Service attempted to deliver the notice. If the notice is delivered by personal service, the licensee is presumed to have received notice upon the date of service.
- ~~E.F.~~ If the licensee does not file an appeal within the 30-day period, the Department's determination becomes final. The Department shall consider the appeal filed on the earlier of the date received by the Department or the date deposited in the United States mail as evidenced by a postmark. If the licensee files a timely appeal, the Department shall request a hearing by the Office of Administrative Hearings.
- ~~F.G.~~ If the licensee appeals the revocation or suspension, the Department shall suspend action until the final order of the Department has been issued under A.A.C. R15-10-131.
- ~~G.H.~~ Pursuant to A.R.S. §§ 41-1092.11(B) and 42-3201(G), the Department may order the summary suspension of a license, pending a hearing by the Office of Administrative Hearings on the revocation or suspension, if the Department finds that the public health, safety, or welfare imperatively requires emergency action and incorporates the finding in the written notice described in subsection ~~(E)~~ (D).

R15-3-317. ~~Reserved~~ Disposition of Seized Tobacco Products

- ~~A.~~ Except as provided in subsection (B), tobacco products seized by the Department are subject to return to a licensee that prevails in an appeal of the seizure.
- ~~B.~~ The Department will destroy products seized under any of the following circumstances:
- ~~1.~~ Tobacco products, other than pipe tobacco or cigars, seized for a violation of A.R.S. § 36-798.06.
 - ~~2.~~ Cigarettes seized for noncompliance with A.R.S. § 41-2170.01 or for lack of markings required by A.R.S. § 41-2170.03;
 - ~~3.~~ Cigarettes seized for a violation of A.R.S. § 42-3210.
 - ~~4.~~ Cigarettes seized pursuant to A.R.S. § 44-7111(6)(b). For the purposes of this paragraph, "cigarette" has the same meaning prescribed in A.R.S. § 44-7101(2)(d).
 - ~~5.~~ Seizure of tobacco products under any other A.R.S. section that requires destruction of the products seized.

R15-3-318. ~~Renumbered~~ Refunds for and Redemption of Cigarette Tax Stamps

- ~~A.~~ The Department does not bear the risk of loss or theft of cigarette tax stamps sold to a licensee and no longer in the Department's possession.
- ~~B.~~ Mistakes on the part of a licensee in the handling, usage, or recordkeeping of cigarette tax stamps in its possession will not suffice to oblige the Department to issue a refund.
- ~~C.~~ The Department is not obligated to refund or redeem stamps for a licensee unless the licensee proves any of the following:
- ~~1.~~ The conditions provided in R15-3-314 have been met to show that the licensee affixed the stamps to cigarettes exported from Arizona;
 - ~~2.~~ The licensee affixed stamps to articles upon which stamps are not required, except for articles deemed contraband under A.R.S. Title 42, Chapter 3;
 - ~~3.~~ The licensee affixed stamps to cigarettes that are unfit for sale due to breakage or spoilage, unless the cigarettes are deemed contraband under A.R.S. Title 42, Chapter 3; or
 - ~~4.~~ The licensee has not used the stamps.
- ~~D.~~ Pursuant to A.R.S. § 42-3008(C), the Department will not refund the tax for cigarette tax stamps affixed to articles that are deemed contraband under A.R.S. Title 42, Chapter 3.