

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES
AND LOCAL GOVERNMENTS
DEPARTMENT OF TAXATION AND FINANCE

1. Effect of rule: The rule will affect approximately 75 cigarette stamping agents, some of which may be small businesses as defined in section 102(8) of the State Administrative Procedure Act. The rule does not distinguish between different business sizes. The rule affects all stamping agents in the same manner, regardless of the size of the business operation. Those agents selling untaxed packages of cigarettes involving Indian reservations will need to notify the Department within 24 hours of the sales.

2. Compliance requirements: The rule will not impose any adverse economic impact or any additional reporting, recordkeeping, or compliance requirements on local governments. Section 471(4) of the Tax Law provides that every cigarette stamping agent that purchases unstamped packages of cigarettes from any person, including, but not limited to, a tobacco product manufacturer, that are intended for resale in or into New York State, must provide that person and the Tax Department with a certification on an annual basis under penalty of perjury that the cigarettes will not be resold in violation of Article 20 of the Tax Law. The rule provides further guidance pertaining to certification requirements. The rule imposes an additional reporting requirement on agents making sales of untaxed packages of cigarettes to an Indian nation or tribe, a reservation cigarette seller or any other person on a reservation. These agents must notify the Department within 24 hours of the sale.

3. Professional Services: The rule imposes no requirements for professional services upon small businesses or local governments. However, an affected stamping agent may decide to use professional services, in addition to those it may already employ to prepare its tax returns, to comply with the certification paperwork required pursuant to the statute and set forth in the rule.

4. Compliance costs: There are no compliance costs to local governments as a result of this rule. The regulated parties affected by this rule are approximately 75 cigarette stamping agents located in New York State. There will be no tax liability costs to these regulated parties for the implementation of and continuing compliance with this rule. The requirement for agents to provide the certification to their suppliers and to the Department is statutory. There are approximately 6 to 8 stamping agents who currently make sales involving Indian reservations that will be required to report their sales of untaxed packages of cigarettes involving Indian reservations to the Department within 24 hours. This will be a simple notification, resulting in minimal administrative costs.

5. Economic and technological feasibility: The rule does not impose any economic or technological compliance burdens on small businesses or local governments.

6. Minimizing adverse impact: This rule relates to the statutory requirement that every cigarette stamping agent that purchases unstamped packages of cigarettes from any person, including, but not limited to, a tobacco product manufacturer, that are intended for resale in or into New York State, must provide that person and the Department with a certification on an annual basis under penalty of perjury that the cigarettes will not be resold in violation of Article 20 of the Tax Law. The rule also provides procedures to be followed for the certification process, such as certification signature and swearing requirements, as well as the time periods covered by the certification. In addition, in order to facilitate the agent certification with respect to sales involving Indian reservations, the rule provides a method whereby agents can determine whether their sales of untaxed packages of cigarettes would be in excess of the amount necessary for use or consumption by the Indian nations or tribes and their members. The rule sets forth a methodology for computing probable demand of the Indian nations or tribes and their members and special reporting requirements for sales of untaxed packages of cigarettes to Indian nations or tribes and reservation cigarette sellers, and provides for the

publication on the Department's Web site of amounts of untaxed packages of cigarettes that may be sold for each Indian nation or tribe.

7. Small business participation: The following organizations are being notified that the Department is developing this rule: the Association of Towns of New York State; the Division of Local Government Services of New York State Department of State; the Division of Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York State Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; the Retail Council of New York State; the New York Association of Convenience Stores; and the New York State Association of Wholesale Marketers and Distributors.