

REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

1. Effect of rule: There are approximately 700 licensed distributors of tobacco products, 585 licensed wholesale dealers of tobacco products (approximately 400 of which are also licensed distributors of tobacco products), and over 28,000 registered retail dealers of tobacco products, some of which are located in rural areas as defined in section 102(13) of the State Administrative Procedure Act, which will be affected by this rule.

2. Compliance requirements: The increase in tax on tobacco products enacted by Chapter 85 of the Laws of 2002, requires all distributors, wholesale dealers and retail dealers to account for all tobacco products in inventory as of the close of business on July 1, 2002, and to pay a floor tax thereon. For purposes of taking the required July 1, 2002 inventories, the rule allows dealers that operate certain vending machines to estimate the contents of such machines at one-half of their normal fill capacities. The rule also outlines the procedures by which such floor tax will be reported and paid. Pursuant to the statutory provisions, the floor tax is allowed to be paid in two installments and the rule provides that a taxpayer's first installment must be at least 25% of the tax due, but cannot be less than \$200. The first installment is due no later than September 20, 2002 and the remaining balance of tax is due no later than January 20, 2003.

3. Professional services: The rule itself imposes no requirements for professional services upon regulated parties. Depending on the nature or volume of a taxpayer's inventory of tobacco products, such taxpayer may deem it necessary to employ additional professional services in order to comply with the provisions of the floor tax imposed by the statute.

4. Compliance costs: See paragraph 4 of the "Regulatory Impact Statement" for this rule. There would be no variation in costs for small businesses.

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: The rule does not distinguish between affected small businesses and other types of businesses. The rule places no additional burdens on small businesses or local governments. However, section 89.3(c)(2) of the rule does provide retail dealers, many of whom are small businesses, with an option to elect use 50 percent of the price that they sell tobacco products at retail in New York State as the wholesale price for purposes of computing their floor tax liability. Generally, the tobacco products tax was not intended to be paid by retail dealers. Consequently, if not for the election provided by this rule, retail dealers would have difficulty determining the base of the tax (i.e., the manufacturers price to distributors).

7. Small business and local government participation: The following organizations have been given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Deputy Secretary of State for Local Government and Community Services; 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 Conference of Mayors; the Small Business Council of the New York State Business Council; and the Retail Council of New York State.