

REGULATORY FLEXIBILITY ANALYSIS FOR
SMALL BUSINESSES AND LOCAL GOVERNMENTS

1. Effect of rule: There are approximately 116 licensed cigarette agents, 309 licensed wholesale dealers of cigarettes, and over 27,000 registered retail dealers of cigarettes, some of which may be small businesses as defined in section 102(8) of the State Administrative Procedure Act, which will be affected by this rule.

2. Compliance requirements: The cigarette tax increase enacted by Chapter 1 of the Laws of 2002, requires all agents, wholesale dealers and retail dealers to account for all cigarettes and unaffixed tax stamps in inventory as of the close of business on April 2, 2002, and to pay a floor tax thereon. For purposes of taking the required April 2, 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 June 20, 2002 and the remaining balance of tax is due no later than October 21, 2002. (Statutorily, the second installment is due on October 20, 2002, which is a Sunday. Section 2399.3 of the Procedural Regulations contained in Chapter IX of Title 20 NYCRR provides that a filing will be considered timely if performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday, i.e. October 21, 2002.)

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 cigarettes and/or unaffixed tax stamps, 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.

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.