

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

1. Effect of rule: The rule will affect approximately 140 licensed tobacco products wholesale dealers that are not also distributors of tobacco products, 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. It affects all of these 140 tobacco products wholesale dealers that are not also distributors in the same manner, regardless of the size of the business operation.

2. Compliance requirements: The rule will not impose any adverse economic impact or any additional reporting, recordkeeping, or compliance requirements on local governments. The rule will require all tobacco products wholesale dealers that are not also distributors, including those that are small businesses, to file new monthly informational returns with the Department, which will be due on the twentieth day of each month, and will provide information relating to the previous month's activity. See paragraphs 3, 4, and 6 of the Regulatory Impact Statement for detailed compliance requirements.

3. Professional Services: The rule itself imposes no requirements for professional services upon small businesses or local governments. However, an affected tobacco products wholesale dealer may decide that professional services, in addition to those already employed by a business in preparing its tax returns, are needed in order for the wholesale dealer to comply with the additional reporting requirements of the rule.

4. Compliance costs: There are no compliance costs to local governments as a result of this rule. With regard to the affected tobacco products wholesale dealers, during the first month that the rule is in effect it is estimated that it will take each dealer one hour and thirty minutes to learn the new requirements of the rule, one hour for recordkeeping, and one hour and thirty minutes to prepare the new returns, for a total of four hours.

Assuming that half of these wholesale dealers will prepare the returns themselves at \$15 per hour and half will use an accountant at \$80 per hour, the resulting average cost for each dealer to comply during the first month will be \$47.50 per hour or \$190. After the first month, the cost of learning the new requirements could be reduced to zero, resulting in compliance costs to each wholesale dealer of \$119 per month in the second month and thereafter. There are no variations in these 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: This rule helps to level the playing field for all tobacco products wholesale dealers, including those that are small businesses, by helping to ensure universal compliance with the tobacco products excise tax. To accomplish this, the rule requires all tobacco products wholesale dealers that are not also distributors to file monthly informational returns with the Department. Recognizing the impact of these new reporting requirements, the Department has taken the following steps to minimize any adverse effects. First, the reporting requirements of the new rule are those which are minimally necessary to close the informational gap which exists within the tobacco products distribution chain. (Closing the information gap is the purpose of the rule, as discussed in more detail in the Regulatory Impact Statement.) Second, the Department has made specific changes in the text of the rule in response to a concern raised by a representative of an industry member that, under an earlier draft of the rule, affected parties would have to report the “wholesale price” of tobacco products. “Wholesale price” is defined for purposes of the tobacco products tax as the established price for which a manufacturer sells tobacco products to a distributor. Because tobacco products can be sold multiple times at the wholesale level, the representative was concerned that the wholesale price would not necessarily be readily available to the affected parties. In response to this concern, the text of the rule was changed so that the affected parties are required to report the “purchase price” and “selling price” instead of the wholesale price, as it was agreed that this information would be readily known. Third, in developing any

necessary new forms (returns), the Department has modeled them after existing returns that are already required to be filed by wholesale dealers that are also distributors of tobacco products. In comparison to the existing Distributor of Tobacco Products Tax Return, the new forms actually provide more space and an improved layout for reporting the required information. Finally, allowing for a period of at least 90 days after the rule is effective for the dealers to begin compliance with the new rule provides ample time for their planning and preparation for its implementation.

7. Small business participation: The following organizations were notified that the Department was in the process of developing this rule and were given the opportunity to participate in the its development: the Cigar Association of America, Inc.; the New York State Association of Tobacco and Candy Distributors; 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 State Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; and the Retail Council of New York State. The notified groups did not submit any comments concerning the rule.