

Specific reasons underlying the finding of necessity: New statutory requirements regarding the collection of taxes on sales of cigarettes made on New York State Indian reservations were enacted by Part D of Chapter 134 of the Laws of 2010. This legislation, enacted on June 21, 2010, set forth a dual system to be used on and after September 1, 2010, that ensures adequate quantities of stamped tax-exempt cigarettes are available to Indian nations or tribes for the use or consumption of the nations or tribes and their members based on their probable demand. The rule provides specificity concerning the methodology and procedures to be used by the department for the statutorily required calculation of probable demand used in both systems and the election of the system by the Indian nations and tribes. As amended by Chapter 136 of the Laws of 2010, section 11 of Part D provided that, within 60 days after the effective date, the department “shall promulgate any rules and regulations and take any other actions necessary to fully implement the provisions of subdivision 5 of section 471 and section 471-e of the tax law” In order to preserve the general welfare as determined by the Legislature by putting the regulatory amendments in place on a timely basis to implement the legislation and to comply with the new statutory requirements as well as the rule making requirements of the State Administrative Procedure Act, this rule was previously adopted as an emergency measure on June 22, 2010, the Notice of Emergency Adoption having been published in the State Register on July 7, 2010. The June 22, 2010, emergency measure is scheduled to expire on September 19, 2010.

The proposal to make the rule permanent was published in the State Register on September 1, 2010. However, the permanent rule will not be effective until the date that the Notice of Adoption is published in the State Register. The earliest date that the Notice of Adoption may be published is November 3, 2010. Accordingly, this emergency readoption is necessary to preserve the general welfare in order to keep the regulations in effect and be in compliance with the new statutory requirements as well as the rule making requirements of the State Administrative Procedure Act, until the proposed rule is adopted as a permanent rule.