

Department of State

**EMERGENCY
RULE MAKING**

Installation of Carbon Monoxide Alarms in Residential Buildings

I.D. No. DOS-45-10-00007-E
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Effective Date: 2010-10-25

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 1220.1 and 1225.1 of Title 19 NYCRR.

Statutory authority: Executive Law, sections 377(1), 378(1) and (5-a)

Finding of necessity for emergency rule: Preservation of public safety.

Specific reasons underlying the finding of necessity: Adoption of this rule on an emergency basis is required to preserve public safety by requiring the installation of carbon monoxide alarms in all one- and two-family dwellings, townhouse dwellings, dwelling accommodations in buildings owned as condominiums or cooperatives, and multiple dwellings, without regard to the date of construction or sale of such buildings, as required by Amanda’s Law (Chapter 367 of the Laws of 2009), which will reduce the number of deaths and injuries caused by carbon monoxide poisoning and, in the words of the sponsor of the bill that became Amanda’s Law, “create safer homes for New Yorkers;”

Subject: Installation of carbon monoxide alarms in residential buildings.

Purpose: To implement Executive Law section 378(5-a), as amended by Chapter 367 of the Laws of 2009.

Substance of emergency rule: Provisions relating to the installation of carbon monoxide alarms in residential buildings are currently found in section RR313.4 of the Residential Code of New York State (the publication referred to and incorporated by reference in 19 NYCRR Part 1220) and section F611 of the Fire Code of New York State (the publication referred to and incorporated by reference in 19 NYCRR Part 1225). The current provisions require the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses and dwelling accommodations in condominiums and cooperatives constructed or offered for sale after July 30, 2002 and in multiple dwellings constructed or offered for sale after August 9, 2005. This rule implements Amanda’s Law (Chapter 367 of the Laws of 2009) by amending section RR313.4 of the Residential Code of New York State and section F611 of the Fire Code of New York State to require the installation of carbon monoxide alarms in all one- and two-family dwellings, townhouses, dwelling accommodations in condominiums and cooperatives, and multiple dwellings, without regard to the date of construction or sale.

The rule adds definitions of terms relevant to the carbon monoxide alarm provisions.

The requirements for newly building constructed after January 1, 2009 are summarized as follows:

- (1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed on or after January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located;
- (2) in Group I-1 occupancies constructed on or after January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area and on each story where a carbon monoxide source is located;
- (3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed on or after January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (and, in the case of a multiple-story dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;
- (4) all carbon monoxide alarms must be hard-wired to the building wiring and, where more than one alarm is required, the alarms must be interconnected; and
- (5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

The requirements for buildings constructed prior to January 1, 2008 are summarized as follows:

- (1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed prior to January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on the lowest story having a sleeping area;
- (2) in Group I-1 occupancies constructed prior to January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area;
- (3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed prior to January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (in the case of a multiple-story dwelling unit or sleeping unit, the alarm must be installed on the lowest story having a sleeping area), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;
- (4) battery operated, cord-type and direct-plug alarms may be used, and the alarms are not required to be interconnected; and
- (5) Carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

In the case of a building of any age that has no commercial or on-site power source, the alarms must be battery operated and need not be interconnected.

Carbon monoxide alarms are not required if no carbon monoxide source is located in or attached to the building.

All carbon monoxide alarms must be listed and labeled as complying with UL 2034 or CAN/CSA 6.19, and must be installed in accordance with the manufacturer’s installation instructions.

Carbon monoxide alarms shall not be removed or disabled, except for service or repair purposes.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 28, 2010.

Text of rule and any required statements and analyses may be obtained from: Raymond J. Andrews, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Raymond.Andrews@dos.state.ny.us

Summary of Regulatory Impact Statement

1. STATUTORY AUTHORITY.

Executive Law section 377 section 377(1) authorizes the State Fire Prevention and Building Code Council to amend the provisions of the New York State Uniform Fire Prevention and Building Code (“Uniform Code”) from time to time. Executive Law section 378(1) directs that the Uniform Code shall address standards for safety and sanitary conditions. Executive Law section 378(5-a), as amended by Chapter 367 of the Laws of 2009, provides that the Uniform Code must require one- and two-family dwellings, dwelling accommodations in a building owned as a condominium or cooperative, and multiple dwellings to be equipped with carbon monoxide alarms.

2. LEGISLATIVE OBJECTIVES.

Memoranda accompanying the bills that most recently amended subdivision (5 a) of Executive Law section 378 included the following justifications:

“This legislation is aimed at preventing more unnecessary deaths due to carbon monoxide poisoning. . . . As with smoke detector/fire alarms many years ago, carbon monoxide alarms have earned the respect of the fire service as a valuable tool in the saving of lives. Everyone recognizes that carbon monoxide kills if not responded to immediately. The most serious quality of CO is that, unlike smoke, it is virtually undetectable, even when someone is awake and alert. Chapter 257 of the laws of 2002 required carbon monoxide alarms be installed in one and two family dwellings and in condominiums and cooperatives that are constructed or sold in order to prevent the loss of life. . . . This bill requires multiple dwelling units of three or more families to install carbon monoxide alarms as well.”

“Current law requires residential dwellings that are constructed or offered for sale after July 30, 2002 to be updated with a carbon monoxide detector. This legislation would remove the construction and sale provisions, leaving it a new requirement that all homes regardless of construction or sale date be outfitted with a carbon monoxide detector. On January 17th, 2009 Amanda Hansen, a 16 year old from West Seneca, New York, died from carbon monoxide poisoning from a defective boiler while at a sleeper at her friend’s house. This legislation would create safer homes for New Yorkers and also prevent future tragedies from occurring.”

The Legislative objective sought to be achieved by this rule is a reduction in the number of deaths and injuries caused by CO poisoning.

3. NEEDS AND BENEFITS.

CO is an invisible, odorless gas that is generated by the incomplete

combustion of carbonaceous fuels such as fuel oil, natural gas, kerosene and wood. CO poisoning results from displacement of oxygen in the blood supply by carboxyhaemoglobin, reducing oxygen supply to the brain. In non fire situations, elevated CO levels may be caused by improperly installed or maintained fuel fired appliances, motor vehicles operated in enclosed garages, or appliances intended for outdoor use being used indoors during power failures. As CO is not detectable by the senses, its presence and concentration can only be determined by instruments.

The rule provides that CO alarms shall be listed and labeled as complying with UL 2034 or CAN/CSA 6.19, the consensus standards for single and multiple station CO alarms in the United States and Canada. Listing of alarm devices ensures their safety and compliance with performance standards. The sensitivity standard in UL 2034 and CAN/CSA 6.19 is based on an alarm response to specified concentrations of CO (in parts per million) within specified time frames. These are based on limiting carboxyhaemoglobin saturation to 10 percent, which earlier studies indicated would have no significant effects on human subjects.

A number of different sources were reviewed to develop an estimate of the annual number of fatalities attributable to unintentional, non fire, building source CO poisoning. The sources reviewed contain estimates ranging between 200 and 1200, nationally. The sources include the U.S. Consumer Product Safety Commission (CPSC), California Air Resources Board, the Journal of the American Medical Association, the Morbidity and Mortality Weekly Report (published by the U.S. Centers for Disease Control) and studies by Dr. David Penney (Wayne State University School of Medicine). Extrapolating these data to New York State, excluding New York City, leads the Code Council to expect between 8 and 48 annual fatalities. Using specific coding in the Vital Statistics Death File prepared by its Bureau of Injury Prevention, the New York State Department of Health (DOH) estimates 14 fatalities annually.

In situations where CO poisoning does not result in death, it may cause significant injuries and long term health consequences. In an observation in Archives of Neurology (Vol. 57, No. 8, August 2000), Sohn et al noted the incidence of Parkinsonism and intellectual impairment in a married couple who experienced CO poisoning simultaneously. While it was noted that both individuals showed complete recovery after thirteen months, the observation is suggestive of additional potential consequences. It should also be noted that CPSC has estimated an average of 10,000 injuries or hospital emergency room visits annually from CO poisoning. Based solely on population, New York State (excluding New York City) could experience approximately 400 injuries annually.

In an article in the American Journal of Forensic Medicine and Pathology (Vol. 10, No. 1, 1989), I. R. Hill notes that fine discriminatory functions begin to be impaired at 5 percent saturations, with significant decrements being noted at the 10 percent saturation level. Hill also notes that headaches occur at 20 to 30 percent saturation, and that nausea, dizziness and muscular weakness occur at 30 to 40 percent. Thus, CO poisoning will affect the judgment and capability of persons to evacuate or take other appropriate actions well before concentrations reach fatal levels.

4. COSTS.

The Uniform Code's current requirements regarding the installation of CO alarms in newly constructed buildings have been in effect since January 1, 2008 (the effective date of the most recent major revision of the Uniform Code). Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on regulated parties who construct new buildings.

Under this rule, owners of residential buildings constructed prior to January 1, 2008 will also be required to install one or more CO alarms in the places specified in this rule. The requirements for buildings constructed prior to January 1, 2008 are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed prior to January 1, 2008, a CO alarm must be installed within each dwelling unit or sleeping unit, on the lowest story having a sleeping area;

(2) in Group I-1 occupancies constructed prior to January 1, 2008, a CO alarm must be installed on each story having a sleeping area;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed prior to January 1, 2008 and not covered by (1) or (2), a CO alarm must be installed in each dwelling unit or sleeping unit where a CO source is located (in the case of a multiple-story dwelling unit or sleeping unit, the alarm must be installed on the lowest story having a sleeping area), and in each dwelling unit or sleeping unit on the same story as a CO source;

(4) battery operated, cord-type and direct-plug alarms may be used, and the alarms are not required to be interconnected; and

(5) CO alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

The initial capital costs of complying with the rule will include the cost of purchasing and installing the CO alarm(s). Cord or plug connected and

battery operated CO alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device. The annual costs of complying with this rule will include the cost of maintaining each alarm in operative condition, such maintenance to include cleaning the alarm and replacing of the alarm's battery (typically once a year). In addition, most manufacturers recommend that their alarms be checked using the alarm's "test" button on a periodic basis (typically once a week) and replaced on a periodic basis (typically once every five years).

There are no costs to the Department of State for the implementation of this rule. The Department is not required to develop any additional regulations or develop any programs to implement this rule.

There are no costs to the State of New York or to local governments for the implementation of the provisions to be added by this rule, except as follows:

First, if the State or any local government owns a one- and two-family dwelling, townhouse, dwelling unit in a condominium or cooperative, or multiple dwelling that is not now equipped with CO alarms, the State or such local government, as the case may be, will be required to install one or more CO alarms in the building.

Second, the authorities responsible for administering and enforcing the Uniform Code (typically, cities, towns, villages and, in some cases, counties) will have additional items to verify in the process of reviewing building permit applications, conducting construction inspections, and (where applicable) conducting periodic fire safety and property maintenance inspections. However, the need to verify the installation of required CO alarms will not have a significant impact on the permitting process or inspection process.

5. PAPERWORK.

This rule imposes no new reporting requirements. No new forms or other paperwork will be required as a result of this rule.

6. LOCAL GOVERNMENT MANDATES.

This rule will not impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district, except as follows:

First, any county, city, town, village, school district, fire district or other special district that owns a one- and two-family dwelling, townhouse, dwelling unit in a condominium or cooperative, or multiple dwelling that is not now equipped with CO alarms will be required to install one or more CO alarms in the building.

Second, cities, towns, villages and counties that administer and enforce the Uniform Code will be responsible for administering and enforcing the requirements of the rule along with all other provisions of the Uniform Code.

The rule does not otherwise impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

7. DUPLICATION.

The rule does not duplicate any existing Federal or State requirement.

8. ALTERNATIVES.

Consideration was given to adopting a rule requiring all CO alarms, including those to be installed in buildings constructed prior to January 1, 2008, to be hard wired and interconnected. This alternative was rejected as it would have unnecessarily increased the cost of bringing pre-2008 buildings into compliance with the new statutory mandate as set forth in subdivision (5 a) of section 378 of the Executive Law.

9. FEDERAL STANDARDS.

There are no standards of the Federal Government which address the subject matter of the rule. The U.S. Consumer Product Safety Commission does recommend installation of CO alarms.

10. COMPLIANCE SCHEDULE.

Regulated persons who own buildings constructed prior to 2008 will be able to comply with this rule by purchasing and installing readily available, battery operated CO alarms.

Requirements for installing CO alarms in newly constructed buildings have been in place since January 1, 2008 and are not changed by this rule. Regulated persons constructing new buildings will continue to be able to comply with this rule by installing hard-wired CO alarms as part of the construction process.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The State Uniform Fire Prevention and Building Code (Uniform Code) currently requires that all residential buildings (one- and two-family dwellings, townhouses, dwelling accommodations in condominiums and cooperatives, and multiple dwellings) constructed after January 1, 2008, and certain residential buildings constructed prior to January 1, 2008, be equipped with one or more carbon monoxide alarms. This rule will amend the Uniform Code to require that all one- and two-family dwellings, all townhouses, all dwelling units in condominiums and cooperatives and all

multiple dwellings, without regard to the date of construction or sale, be equipped with one or more carbon monoxide alarms. Therefore, this rule will affect any small business or local government that owns a residential building in which carbon monoxide alarms were not previously.

Since this rule adds provisions to the Uniform Code, each local government that is responsible for administering and enforcing the Uniform Code will be affected by this rule. The Department of State estimates that approximately 1,604 local governments (mostly cities, towns and villages, as well as several counties) are responsible for administering and enforcing the Uniform Code.

2. COMPLIANCE REQUIREMENTS:

No reporting or record keeping requirements are imposed upon regulated parties by the rule.

Since this rule amends the Uniform Code, local governments that administer and enforce the Uniform Code will be required to check for compliance with this rule when reviewing applications for building permits, when performing construction inspections, and when performing periodic fire safety and property maintenance inspections.

In addition, small businesses and local governments the own or construct one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, or multiple dwellings will be required to install, use and maintain carbon monoxide alarms in accordance with the rule's provisions. The requirements applicable to newly constructed buildings differ from the requirements applicable to existing buildings, and will be discussed separately.

Newly Constructed Buildings. The Uniform Code's current requirements regarding the installation of carbon monoxide alarms in newly constructed buildings have been in effect since January 1, 2008 (the effective date of the most recent major revision of the Uniform Code). Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on regulated parties who construct new buildings. The current requirements for newly constructed buildings (which are continued by this rule) are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed on or after January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located;

(2) in Group I-1 occupancies constructed on or after January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area and on each story where a carbon monoxide source is located;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed on or after January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (and, in the case of a multiple-story dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) all carbon monoxide alarms must be hard-wired to the building wiring and, where more than one alarm is required, the alarms must be interconnected; and

(5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

Existing Buildings. Under this rule, owners of one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings constructed prior to January 1, 2008 will also be required to install one or more carbon monoxide alarms in the places specified in this rule. However, the current version of the Uniform Code requires the installation of carbon monoxide alarms in three major groups of pre-2008 buildings: (1) one- and two-family dwellings and townhouses which are more than three stories in height and which were constructed or offered for sale after June 30, 2002, (2) dwelling accommodations in condominiums and cooperatives constructed or offered for sale after June 30, 2002, and (3) multiple dwellings constructed or offered for sale after August 9, 2005. The requirements currently applicable to these three groups of pre-2008 buildings have been in effect since January 1, 2008. Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on buildings in these three groups.

The principal impact of this rule will be on regulated parties who own a residential building in which carbon monoxide alarms were not previously required, viz., (1) one- and two-family dwellings and townhouses which are not more than three stories in height and which were constructed prior to January 1, 2008, (2) one- and two-family dwellings and townhouses which are more than three stories in height, which were constructed prior to June 30, 2002 and which have not been offered for sale since June 30, 2002, (3) dwelling accommodations in condominiums and cooperatives which were constructed prior to June 30, 2002 and which have not been

offered for sale since June 30, 2002, and (4) multiple dwellings which were constructed prior to August 9, 2005 and which were not offered for sale at any time since August 9, 2005. The requirements to be imposed by this rule on the buildings in the groups described in this paragraph will be identical to the existing requirements now imposed by the Uniform Code on the buildings in the groups described in the preceding paragraph. Those requirements are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed prior to January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on the lowest story having a sleeping area;

(2) in Group I-1 occupancies constructed prior to January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed prior to January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (in the case of a multiple-story dwelling unit or sleeping unit, the alarm must be installed on the lowest story having a sleeping area), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) battery operated, cord-type and direct-plug alarms may be used, and the alarms are not required to be interconnected; and

(5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

3. PROFESSIONAL SERVICES:

No professional services will be required to comply with the rule.

4. COMPLIANCE COSTS:

The initial capital costs of complying with the rule will include the cost of purchasing and installing the carbon monoxide alarm(s). Cord or plug connected and battery operated carbon monoxide alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device. Such costs are not likely to vary for small businesses or local governments of different types and differing sizes.

The annual costs of complying with this rule will include the cost of maintaining each alarm in operative condition, such maintenance to include cleaning the alarm and replacing of the alarm's battery (typically once a year). In addition, most manufacturers recommend that their alarms be checked using the alarm's "test" button on a periodic basis (typically once a week) and replaced on a periodic basis (typically once every five years).

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

It is economically and technologically feasible for regulated parties to comply with the rule. No substantial capital expenditures are imposed and no new technology need be developed for compliance.

6. MINIMIZING ADVERSE IMPACT:

The current requirements for the installation of carbon monoxide alarms in buildings constructed on or after January 1, 2008 (the effective date of the most recent overall revision of the Uniform Code) have been in effect since January 1, 2008 and are continued without substantial change by this rule. Thus, the principal impact of this rule will be on regulated parties (including small businesses or local governments) who own buildings constructed prior to January 1, 2008 and who will now be required to install carbon monoxide alarms in such buildings. The rule minimizes any potential adverse economic impact on such regulated parties by allowing for the installation of battery operated, cord-type or direct plug carbon monoxide alarms in buildings constructed prior to January 1, 2008, and by not requiring the alarms installed in such buildings to be interconnected.

The applicable statute (Executive Law section 378(5-a)) requires that this rule apply to all one- and two-family dwellings, townhouses, dwelling units in condominiums or cooperatives, and multiple dwellings. The statute does not authorize the establishment of differing compliance requirements or timetables with respect to dwellings owned or operated by small businesses or local governments.

Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(5-a) and would endanger public safety.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department of State notified interested parties throughout the State of the proposed adoption of this rule by means of notices posted on the Department's website and notices published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 7,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

Rural Area Flexibility Analysis**1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.**

This rule implements the provisions of subdivision (5-a) of section 378 of the Executive Law, as amended by Chapter 367 of the Laws of 2009, by adding provisions to the State Uniform Fire Prevention and Building Code (the Uniform Code) requiring that carbon monoxide (CO) alarms be installed in all one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings. Since the Uniform Code applies in all areas of the State (other than New York City), this rule will apply in all rural areas of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

The rule will not impose any reporting or recordkeeping requirements.

The rule will impose the following compliance requirement: owners of one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings will be required to install one or more carbon monoxide alarms in the places or places specified in this rule. The requirements applicable to newly constructed buildings differ from the requirements applicable to existing buildings, and will be discussed separately.

Newly Constructed Buildings. The Uniform Code's current requirements regarding the installation of carbon monoxide alarms in newly constructed buildings have been in effect since January 1, 2008 (the effective date of the most recent major revision of the Uniform Code). Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on regulated parties who construct new buildings. The current requirements for newly constructed buildings (which are continued by this rule) are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed on or after January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located;

(2) in Group I-1 occupancies constructed on or after January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area and on each story where a carbon monoxide source is located;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed on or after January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (and, in the case of a multiple-story dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) all carbon monoxide alarms must be hard-wired to the building wiring and, where more than one alarm is required, the alarms must be interconnected; and

(5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

Existing Buildings. Under this rule, owners of one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings constructed prior to January 1, 2008 will also be required to install one or more carbon monoxide alarms in the places specified in this rule. However, the current version of the Uniform Code requires the installation of carbon monoxide alarms in three major groups of pre-2008 buildings: (1) one- and two-family dwellings and townhouses which are more than three stories in height and which were constructed or offered for sale after June 30, 2002, (2) dwelling accommodations in condominiums and cooperatives constructed or offered for sale after June 30, 2002, and (3) multiple dwellings constructed or offered for sale after August 9, 2005. The requirements currently applicable to these three groups of pre-2008 buildings have been in effect since January 1, 2008. Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on buildings in these three groups.

The principal impact of this rule will be on regulated parties who own a residential building in which carbon monoxide alarms were not previously required, viz., (1) one- and two-family dwellings and townhouses which are not more than three stories in height and which were constructed prior to January 1, 2008, (2) one- and two-family dwellings and townhouses which are more than three stories in height, which were constructed prior to June 30, 2002 and which have not been offered for sale since June 30, 2002, (3) dwelling accommodations in condominiums and cooperatives which were constructed prior to June 30, 2002 and which have not been offered for sale since June 30, 2002, and (4) multiple dwellings which were constructed prior to August 9, 2005 and which were not offered for sale at any time since August 9, 2005. The requirements to be imposed by this rule on the buildings in the groups described in this paragraph will be identical to the existing requirements now imposed by the Uniform Code

on the buildings in the groups described in the preceding paragraph. Those requirements are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed prior to January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on the lowest story having a sleeping area;

(2) in Group I-1 occupancies constructed prior to January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed prior to January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (in the case of a multiple-story dwelling unit or sleeping unit, the alarm must be installed on the lowest story having a sleeping area), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) battery operated, cord-type and direct-plug alarms may be used, and the alarms are not required to be interconnected; and

(5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

3. COMPLIANCE COSTS.

The initial capital costs of complying with the rule will include the cost of purchasing and installing the carbon monoxide alarm(s). Cord or plug connected and battery operated carbon monoxide alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device. Such costs are not likely to vary for different types of public and private entities in rural areas.

The annual costs of complying with this rule will include the cost of maintaining each alarm in operative condition, such maintenance to include cleaning the alarm and replacing of the alarm's battery (typically once a year). In addition, most manufacturers recommend that their alarms be checked using the alarm's "test" button on a periodic basis (typically once a week) and replaced on a periodic basis (typically once every five years).

4. MINIMIZING ADVERSE IMPACT.

The current requirements for the installation of carbon monoxide alarms in buildings constructed on or after January 1, 2008 (the effective date of the most recent overall revision of the Uniform Code) have been in effect since January 1, 2008 and are continued without substantial change by this rule. Thus, the principal impact of this rule will be on regulated parties who own buildings constructed prior to January 1, 2008 and who will now be required to install carbon monoxide alarms in such building. The rule minimizes any potential adverse economic impact on such regulated parties by allowing for the installation of battery operated, cord-type or direct plug carbon monoxide alarms in buildings constructed prior to January 1, 2008, and by not requiring the alarms installed in such buildings to be interconnected.

The rule also permits the use of battery operated alarms in buildings without a commercial or on-site power source.

Executive Law section 378(5-a) makes no distinction between one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings located in rural areas and those located in non-rural areas. However, the impact of this rule in rural areas will be no greater than the impact of this rule in non rural areas, and the ability of individuals or public or private entities located in rural areas to comply with the requirements of this rule should be no less than the ability of individuals or public or private entities located in non-rural areas.

Executive Law section 378(5-a) requires that this rule apply to all one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings. The statute does not authorize the establishment of differing compliance requirements or timetables in rural areas.

Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(5-a) and would endanger public safety.

5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State of the proposed adoption of this rule by means of notices posted on the Department's website and notices published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 7,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

Job Impact Statement

The Department of State has concluded after reviewing the nature and purpose of the rule that it will not have a "substantial adverse impact on

jobs and employment opportunities” (as that term is defined in section 201-a of the State Administrative Procedures Act) in New York.

This rule amends the State Uniform Fire Prevention and Building Code (the Uniform Code) to require that all one- and two-family dwellings, townhouses, dwelling accommodations in condominiums and cooperatives, and multiple dwellings be equipped with carbon monoxide alarms. This amendment is required to satisfy the requirements of subdivision (5-a) of section 378 of the Executive Law, as amended by Chapter 367 of the Laws of 2009.

The Uniform Code has contained provisions requiring installation of carbon monoxide alarms in certain situations since at least 2002. The current requirements relating to installation of alarms in newly constructed buildings have been in effect since January 1, 2008, and are continued without substantial change by this rule. For newly constructed buildings, the carbon monoxide alarms will continue to be installed as part of the construction process.

Under the current version of the Uniform Code and under prior versions of the Uniform Code, an existing building that was not required to have carbon monoxide alarms installed at the time of construction would be required to have carbon monoxide alarms installed at the time the building was offered for sale. Under this rule, existing residential buildings will be required to have carbon monoxide alarms installed, even if they are not being offered for sale. However, potential adverse economic impact on regulated parties is minimized by the provisions of the rule that allow the use of battery operated, cord-type or direct plug carbon monoxide alarms in buildings constructed prior to January 1, 2008, and by provisions that permit the use of battery operated carbon monoxide alarms in buildings without a commercial or on-site power source.

Once installed, the carbon monoxide alarms must be used and maintained in accordance with manufacturer’s instructions.

Existing provisions in the Uniform Code require the installation of carbon monoxide alarms in newly constructed residential buildings. Those requirements are continued without substantial change by this rule. Therefore, this rule adds no new requirements relating to newly constructed buildings, and this rule should have no substantial adverse impact on jobs and employment opportunities related to the construction of new residential buildings.

The costs of purchasing, installing and maintaining the alarms is insignificant in comparison to the cost of purchasing, owning, and operating an existing residential building. Therefore, this rule should have no substantial adverse impact on sales, purchases, ownership or operation of existing residential buildings and, consequently, this rule should have no substantial adverse impact on jobs and employment opportunities related to the sale, purchase, ownership or operation of existing residential buildings.

Department of Taxation and Finance

NOTICE OF ADOPTION

Sales of Cigarettes on Indian Reservations

I.D. No. TAF-35-10-00002-A

Filing No. 1097

Filing Date: 2010-10-22

Effective Date: 2010-11-10

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of sections 74.6 and 74.7 to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 471(1), (4), and (5); 471-e; 475 (not subdivided); and L. 2010, ch. 134, part D

Subject: Sales of cigarettes on Indian reservations.

Purpose: To implement certain provisions of recently enacted legislation concerning sales of cigarettes on Indian reservations.

Substance of final rule: This rule concerns the collection of taxes on sales of cigarettes made on New York State Indian reservations as required by sections 471 and 471-e of the Tax Law, and provides procedures to be followed by New York State licensed cigarette stamping agents for the certification process required by section 471 of the Tax Law. The rule was previously adopted as an emergency measure.

Section 1 of the rule adds a new section 74.6 to the cigarette tax regulations to address sales of cigarettes on Indian reservations and to describe

the two statutory mechanisms (systems) for the delivery of quantities of tax-exempt cigarettes to Indian nations or tribes for the personal use and consumption of their qualified members based on their probable demand plus the amount needed for official nation or tribal use. Indian nations or tribes may elect to participate in the Indian tax exemption coupon system established in section 471-e of the Tax Law, or, if such election is not made, the prior approval system established in section 471(5) of the Tax Law will be used. Under the prior approval system New York State licensed cigarette stamping agents and wholesale dealers that have received prior approval from the Tax Department may sell certain quantities of stamped untaxed packages of cigarettes to Indian nations or tribes and reservation cigarette sellers. 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.

Section 2 of the rule adds a new section 74.7 to the cigarette tax regulations relating to the statutory provisions of section 471(4) that require every cigarette stamping agent that purchases unstamped packages of cigarettes intended for resale in New York State to annually provide its supplier and the Tax Department with a certification, under penalty of perjury, that the cigarettes will not be resold in violation of Article 20 of the Tax Law. Procedures to be followed for the certification process are set forth in the rule, such as certification signature and swearing requirements, time periods covered by the certification, and the contents of the certification. With regard to the contents, the certification must specifically provide that the agent will only make sales of tax-exempt stamped packages of cigarettes to Indian nations or tribes or to reservation cigarette sellers that are in accordance with the provisions of new section 74.6 of the rule.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 74.6(b)(1).

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax_regulations@tax.state.ny.us

Revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

A revised Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, Rural Area Flexibility Analysis, and Job Impact Exemption are not required to be submitted because the unsubstantial revisions made to the proposed rule do not affect any of the statements made in these documents.

The rule relates to recently enacted legislation regarding the collection of taxes on cigarettes sold on New York State Indian reservations. As amended by Part D of Chapter 134 of the Laws of 2010, section 471(1) of the Tax Law imposes the tax on cigarettes including all cigarettes sold on an Indian reservation to non-members of the Indian nation or tribe and to non-Indians, and provides for a statutory dual system to be used on and after September 1, 2010, that ensures adequate quantities of stamped but tax-exempt cigarettes are available for purchase by the nation or tribe and its members for their use or consumption based on their probable demand. The rule details requirements for the use of the statutory dual system.

In order to meet the statutory implementation deadline of September 1, 2010, the proposed rule was previously adopted as an emergency measure on June 22, 2010, and provided for the election by an Indian nation or tribe to participate in the Indian tax exemption coupon system for the twelve-month period beginning September 1, 2010, to be made by August 15, 2010. However, various state and federal court challenges by Indian nations or tribes have precluded implementation and enforcement of the statutory and regulatory amendments on September 1, 2010. In light of the uncertainty created by this recent litigation, the proposed rule has been revised to provide flexibility both now and in the future by authorizing the Department to allow the recognized governing body of an Indian nation or tribe to elect to use the Indian tax exemption coupon system on a date other than the preceding August 15 for the twelve-month period beginning September 1 and ending August 31. In the case of a later election, the Indian tax exemption coupon system would apply with respect to that Indian nation or tribe for the remainder of the twelve-month period beginning September 1, and the amount of coupons provided to the recognized governing body for the first quarter during which the election applies would be reduced to account for the quantity of tax-exempt cigarettes sold to the Indian nation or tribe or a reservation cigarette seller in compliance with the prior approval system during the quarter.

These unsubstantial revisions merely provide more flexibility as to the date by which the election can be made, and there are no modifications to the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Exemption necessary as a result of the changes.

Assessment of Public Comment

Written comments were received from the Seneca Nation of Indians (the Nation) and Altria Client Services Inc. on behalf of Philip Morris USA Inc. (PM USA) regarding proposal TAF-35-10-00002-P.