

## REGULATORY IMPACT STATEMENT

### DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations, such as may be necessary for the exercise of the Department's powers and performance of its duties; Public Officers Law section 87 (Freedom of Information Law) requires each agency to promulgate rules and regulations in conformity with the Freedom of Information Law (FOIL) and applicable rules and regulations promulgated by the Committee on Open Government pertaining to the availability of records and procedures to be followed (21 NYCRR Part 1401); Public Officers Law section 89(4)(a) provides that any person denied access to a record may appeal such denial to the head of such agency or the person therefor designated by such head; 21 NYCRR 1401.7(a) requires the head of an agency to determine appeals or designate a person or body to hear appeals regarding denial of access to records under the Freedom of Information Law.

2. Legislative objectives: In keeping with the Department's duties under section 171 First of the Tax Law, the proposed rule amends 20 NYCRR 2370.8(a) to provide the commissioner with more flexibility in designating a records appeals officer to respond to appeals from decisions regarding public access to records requests. Section 2370.8 currently explicitly designates the Deputy Counsel of the Office of Counsel of the Department of Taxation and Finance as records appeals officer. The amendments simply remove the restrictive language explicitly limiting the records appeals officer to one specific person, instead defining "records appeals officer" as the person designated by the commissioner to hear appeals from denial of access to records or denial of exception from disclosure under the Freedom of Information Law. These amendments give the commissioner greater flexibility in designating a records appeals officer, thereby enabling the department to more efficiently discharge its obligations under the Freedom of Information Law.

3. Needs and benefits: The rule accords the commissioner greater flexibility in designating the records appeals officer to respond to appeals from decisions relating to public requests for access to departmental records. Currently, 20 NYCRR 2370.8(a) specifically designates as records appeals officer the Deputy Counsel of the Office of Counsel of the Department of Taxation and Finance. The proposed rule would define “records appeals officer” as the person so designated by the commissioner, thereby providing for more latitude in designating the department’s records appeals officer. The duties and responsibilities of the records appeals officer would remain unchanged. The rule merely makes it possible for someone other than the Deputy Counsel to be the designated records appeals officer, providing the department with greater flexibility to dedicate its resources, thereby enhancing the department’s ability to efficiently discharge its obligations under the Freedom of Information Law.

4. Costs: (a) Costs to regulated parties for the implementation and continuing compliance with this rule: The rule imposes no additional costs on regulated parties.

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: No additional costs are imposed on the agency for the implementation and continuation of the rule.

(c) Costs to private regulated parties: The amendments do not impose any costs on private regulated parties.

(d) Costs to regulating agency for implementation and continued administration: The amendments do not impose any costs on the regulating agency for implementation and continued administration.

(e) Information and methodology: This analysis is based on a review of the statutory requirements and on discussions among department personnel.

5. Local government mandates: The rule imposes no local government mandates.

6. Paperwork: This rule will not require any new forms or information.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: The Department did not consider other alternatives because the designation language of the records appeals officer provision is so restrictive that the only alternative that provides the commissioner with greater flexibility in appointing such an officer is to amend the language designating one specific individual as that officer.

9. Federal standards: This rule does not exceed any minimum standards of the federal government for the same or similar subject area.

10. Compliance schedule: Because the amendments do not eliminate the required position of records appeals officer, but rather merely expand the potential candidates to hold that position beyond one specific individual, the rule has no compliance scheduling implications for regulated parties.