

Notice of Proposed Rule Making

Adirondack Park Agency
(SUBMITTING AGENCY)

- Approval has been granted by Executive Chamber to propose this rule making.
- This rule making does not require Executive Chamber approval.

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms will be cause for rejection of this notice.

1. A. <i>Proposed action:</i>		
Addition of	572.15	Title <u>9</u> NYCRR
Amendment of	572.22	Title <u>9</u> NYCRR
_____	_____	Title _____ NYCRR
_____	_____	Title _____ NYCRR
_____	_____	Title _____ NYCRR
_____	_____	Title _____ NYCRR

- B. This is a consensus rule making. A statement is attached setting forth the agency's determination that no person is likely to object to the rule as written [SAPA §202(1)(b)(i)].
- C. This rule was previously proposed as a consensus rule making under I.D. No. _____. Attached is a brief description of the objection that caused/is causing the prior notice to be withdrawn [SAPA §202(1)(e)].
- D. This rule is proposed pursuant to [SAPA §207(3)], 5-Year Review of Existing Rules (see also item 16).

2. *Statutory authority under which the rule is proposed:*
 Executive Law §§ 804(a), 806(4), 809(14),(15) and 814(4)

3. *Subject of the rule:*
 Emergency projects

4. *Purpose of the rule:*
 The purpose of the proposed rule is to define when jurisdictional land use and development constitutes an emergency project.

5. *Public hearings (check box and complete as applicable):*
- A public hearing is not scheduled. (SKIP TO ITEM 8)
 - A public hearing is required by law and is scheduled below. (**Note:** first hearing date must be at least 45 days **after** publication of this notice unless a different time is specified in statute.)
 - A public hearing is not required by law, but is scheduled below.

Time:	Date:	Location:
06:00 PM	03/04/2015	Adirondack Park Agency 1133 Rt 86, Ray Brook, NY
02:00 PM	03/05/2015	NYSDEC, Room 129 625 Broadway, Albany, NY

6. Interpreter services (check only if a public hearing is scheduled):

Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.

7. Accessibility (check appropriate box only if a public hearing is scheduled):

All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Attached is a list of public hearing locations that are not reasonably accessible to persons with a mobility impairment. An explanation is submitted regarding diligent efforts made to provide accessible hearing sites.

8. Terms of rule (SELECT ONE SECTION):

A. The full text of the rule is attached because it does not exceed 2,000 words.

B. A summary of the rule is attached because the full text of the rule exceeds 2,000 words.

Full text is posted at the following State website: _____

Full text is not posted on a State website.

Full text is not posted on a State website; this is a consensus rule or a rule defined in SAPA § 102 (2)(a)(ii).

C. Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(2)(a)(ii) [Rate Making].

9. The text of the rule and any required statements and analyses may be obtained from:

Agency contact Jennifer McAleese, Senior Attorney

Agency Name Adirondack Park Agency

Office address 1133 Rt 86, Ray Brook, New York 12977

Telephone (518) 891-4050 E-mail: APARuleMaking@apa.ny.gov

10. Submit data, views or arguments to (complete only if different than previously named agency contact):

Agency contact _____

Agency name _____

Office address _____

Telephone _____ E-mail: _____

11. *Public comment will be received until:*

- 45 days after publication of this notice (MINIMUM public comment period when full text is attached because it does not exceed 2000 words or full text of rule has been posted on a State web site or the rule is a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).
- 60 days after publication of this notice (MINIMUM public comment period when full text is not attached or full text is not posted on a State web site or the rule is not a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).
- 5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing). This box may not be checked and the minimum 60-day comment period applies if full text is not attached or text is not posted on a State web site or the rule is not a consensus rule or a rule defined under SAPA §102[2][a][ii] [Rate Making]).
- Other: (*specify*) 03/21/2015

12. A prior emergency rule making for this action was previously published in the _____ issue of the *Register*, I.D. No. _____.

13. *Expiration date* (check only if applicable):

- This proposal will not expire in 365 days because it is for a "rate making" as defined in SAPA §102 (2)(a)(ii).

14. *Additional matter required by statute:*

- Yes (include below material required by statute).

- No additional material required by statute.

15. *Regulatory Agenda* (See SAPA §202-d[1]):

- This rule was a Regulatory Agenda item for this agency in the following issue of the *State Register*:

- This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the *Register*.
- Not applicable.

16. **Review of Existing Rules** (ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

This rule is proposed pursuant to SAPA §207 (item 1D applies) (check applicable boxes):

- Attached is a statement setting forth a reasoned justification for modification of the rule. Where appropriate, include a discussion of the degree to which changes in technology, economic conditions or other factors in the area affected by the rule necessitate changes in the rule.
- Attached is an assessment of public comments received by the agency in response to its publication of a list of rules to be reviewed.
- An assessment of public comments is not attached because no comments were received.
- Not applicable.

17. Regulatory Impact Statement (RIS)

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS, EXCLUDING SUMMARIES OF STUDIES, REPORTS OR ANALYSES [Needs and Benefits]):

A. The attached RIS contains:

The full text of the RIS.

A summary of the RIS.

A consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year.

B. A RIS is **not attached**, because this rule is:

subject to a consolidated RIS printed in the *Register* under I.D. No.: _____ - _____ ;
issue date: _____ .

exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

exempt, as defined in SAPA §102(11) [Consensus Rule Making].

C. A **statement is attached** claiming exemption pursuant to SAPA § 202-a (technical amendment).

18. Regulatory Flexibility Analysis (RFA) for small businesses and local governments

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached RFA contains:

The full text of the RFA.

A summary of the RFA.

A consolidated RFA, because this rule is one of a series of closely related rules.

B. A **statement is attached** explaining why a RFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.

C. A RFA is **not attached**, because this rule:

is subject to a consolidated RFA printed in the *Register* under I.D. No.: _____ - _____ ;
issue date: _____ .

is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

19. Rural Area Flexibility Analysis (RAFA)

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached RAFA contains:

The full text of the RAFA.

A summary of the RAFA.

A consolidated RAFA, because this rule is one of a series of closely related rules.

B. A **statement is attached** explaining why a RAFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas and the reason(s) upon which the finding was made, including what measures were used to determine that the rule will not impose such adverse impact or compliance requirements.

C. A RAFA is **not attached**, because this rule:

is subject to a consolidated RAFA printed in the *Register* under I.D. No.: _____ - _____ ;
issue date: _____ .

is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

20. Job Impact Statement (JIS)

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached JIS contains:

The full text of the JIS.

A summary of the JIS.

A consolidated JIS, because this rule is one of a series of closely related rules.

B. A **statement is attached** explaining why a JIS is not required. This statement is in scanner format and explains the agency's finding that the rule will not have a substantial adverse impact on jobs and employment opportunities (as apparent from its nature and purpose) and explains the agency's finding that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.

A JIS/Request for Assistance [SAPA §201-a(2)(c)] is attached.

C. A JIS is **not attached**, because this rule:

is subject to a consolidated JIS printed in the *Register* under I.D. No.: _____
issue date: _____

is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

is proposed by the State Comptroller or Attorney General.

AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice.)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name Jennifer McAleese, Senior Attorney

Signature _____

Address 1133 Rt. 86, Ray Brook, New York 12977

Telephone (518) 891-4050

E-Mail APARuleMaking@apa.ny.gov

Date 01/20/2015

Please read before submitting this notice:

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's Register procedures manual, *Rule Making in New York*.
2. Rule making notices with any necessary attachments should be e-filed via the Department of State website.

A new section 572.15 is added to 9 NYCRR to read as follows:

Section 572.15 Emergency Projects.

(a) *General.* This section provides the procedural requirements for the issuance of an *emergency certification* or an *emergency recovery authorization* for a project undertaken to address an *emergency*. No other requirements of this Subtitle shall apply to an *emergency project*. It is within the Agency's discretion to determine whether a specific event or conditions constitutes an *emergency* and whether proposed land use or development is an *emergency project*.

(b) *Definitions used in this section.*

(1) *Emergency* means: (i) a specific event or condition that presents an immediate threat to life or property; or (ii) a specific storm event or natural calamity that has been declared to be an emergency by federal or state officials.

(2) *Emergency project* means land use or development that is immediately necessary for the protection of life or property and that would otherwise require a permit, order, or variance.

(3) *Emergency certification* means a written determination by the Agency that an *emergency* exists or has existed and that an *emergency project* may be undertaken or has been undertaken to prepare for or mitigate the *emergency*.

(4) *Emergency recovery authorization* means a written determination by the Agency authorizing an *emergency project* that is necessary for repair, remediation or recovery from an *emergency* as defined in subdivision (b)(1) of this section and that is not covered by an *emergency certification*.

(c) *Emergency Certification Procedures.* (1) To obtain an *emergency certification*, a project sponsor shall: (i) notify the Agency with sufficient information to allow for an Agency determination whether an emergency as defined in paragraphs (b)(1)(i) and (ii) of this section exists or existed and whether the project is an emergency project as defined in subdivision (b)(2) of this section; and (ii) obtain an emergency certification prior to undertaking an emergency project or as soon thereafter as practicable.

(2) The Agency shall issue an *emergency certification* upon a determination that: (i) an *emergency* exists or existed; and (ii) the *emergency project* is limited in scope to the land use and development necessary to prepare for or mitigate the *emergency*. The Agency shall have two business days from receipt of sufficient information to issue an *emergency certification*.

(3) The *emergency certification* shall include a description of the land use and development comprising the *emergency project*, and may include conditions to limit the timing and duration of the *emergency project* and its impact on any of the natural, scenic, aesthetic, ecological, wildlife, historic, recreational, or open space resources of the Park.

(4) An *emergency certification* may only be issued by the executive director, deputy director – regulatory programs and such other Agency staff as the executive director shall designate in writing.

(d) *Emergency Recovery Authorization Procedures.* (1) A project sponsor proposing an emergency project under this subdivision shall notify the Agency prior to undertaking the *emergency project* and provide the Agency with the following information:

(i) a brief statement identifying the *emergency*, as defined in paragraph(b)(1) of this section that created the need for the *emergency project*;

(ii) a description of the proposed land use and development and why it is necessary for repair, remediation or recovery from an *emergency*;

(iii) documentation of existing conditions;

(iv) a location map;

(v) actions proposed to be taken to minimize environmental impacts; and

(vi) any additional information requested by the Agency necessary for the issuance of an *emergency recovery authorization*.

(2) The Agency shall issue an *emergency recovery authorization* for an *emergency project* upon a determination that: (i) the *emergency project* is directly related to an *emergency* as defined in paragraph (b)(1) of this section; (ii) the *emergency project* is limited in scope to the land use and development necessary to repair, remediate or recovery from the *emergency*; and (iii) the *emergency project* will cause the least change, modification, disturbance, or damage to the environment as practicable. The Agency shall have 5 business days to respond to a request for an *emergency recovery authorization* upon receipt of sufficient information.

(3) The *emergency recovery authorization* shall include a description of the land use and development comprising the emergency project and may include conditions to limit the timing and duration of the *emergency project* and its impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational, or open space resources of the Park.

(4) An *emergency recovery authorization* may only be issued by the executive director, deputy director – regulatory programs and such other Agency staff as the executive director shall designate in writing.

(e) *Limitations.* (1) The Agency may modify or rescind an *emergency certification* or *emergency recovery authorization* if new information demonstrates that an *emergency* does not, or no longer, exist or that the *emergency project* is not, or no longer, necessary or appropriate.

(2) Any person who undertakes land use or development that otherwise would require a permit or variance from the Agency that is not described in an *emergency certification* or *emergency recovery authorization* issued to such person pursuant to this section may be subject to enforcement action.

Subdivision (a) of section 572.22 of 9 NYCRR is amended to read as follows:

(a) Appeals of actions taken by Agency staff [the deputy director – regulatory programs].

(1) Any project sponsor or variance applicant may appeal the following actions of the deputy director-regulatory programs to the [a]Agency:

(i) determinations whether a project or variance application is complete, and the contents of requests for additional information;

(ii) conditions precedent to the issuance of, and conditions imposed in, permits issued pursuant to the authority delegated in section 572.11 of this Part;

(iii) determinations pursuant to section 572.19(b) of this Part whether a request to amend a permit or variance involves a material change;

(iv) denial or conditional approval of requests to amend permits or variances, or requests to renew permits; or

(v) any other action with respect to a project or a variance pursuant to delegated authority.

(2) Any person may appeal any determination made pursuant to section 572.15 of this Part declining to issue an emergency certification or emergency recovery authorization.

ADIRONDACK PARK AGENCY
REGULATORY IMPACT STATEMENT

1. Statutory authority:

The Adirondack Park Agency Act (APA Act), Executive Law Article 27, Section 804(9), authorizes the Agency "to adopt, amend and repeal...such rules and regulations...as it deems necessary to administer this article and to do any and all things necessary or convenient to carry out the purposes and policies of this article...." Similar authority to regulate wild, scenic and recreational rivers and freshwater wetlands in the Adirondack Park is found in the NYS Wild, Scenic and Recreational Rivers System Act (Rivers Act) (Environmental Conservation Law (ECL) Section 15-2705) and in the NYS Freshwater Wetlands Act (Wetlands Act) (ECL Article 24, Title 8. The Agency's statutory authority to adopt regulations to define whether land use or development is an "emergency project" is set forth in Executive Law Sections 806(4) with respect to shoreline restrictions, 809(14) and (15) with respect to land use and development on private lands, and 814(4) and (5) with respect to state agency projects. ECL Section 70-0107(3)(c) and(j) specify that the Rivers Act and the Wetlands Act, with respect to provisions administered by the Agency, are subject to the procedures of Executive Law Section 809.

2. Legislative objectives:

During an emergency, it is often difficult to obtain regulatory approval before one must act to protect life or property. In addition, following the emergency, there continues to be additional work that must take place to recover from the emergency before the Agency's regular permitting or variance review processes can be completed. The primary objective of the proposed emergency project rule is to define when jurisdictional land use and development constitutes an

emergency project. Land use and development that is determined to be an “emergency project” is exempt from the Agency’s normal regulatory review procedures.

The APA Act provides for an exemption from the Agency’s jurisdiction and normal review procedures in sections 806(4), 809(15), and 814(4); each section contains a clause stating that the section does not apply to land use or development that is “immediately necessary for the protection of life or property.” This proposed rule is intended to provide more definition for this statutory exemption by clarifying what constitutes an emergency project and by establishing an expedited process for ensuring that land use or development that falls within the statutory exemption is directly related to the work necessary to address the ongoing emergency, thereby limiting any unrelated adverse environmental impacts. In addition, this rulemaking proposes an amendment to existing rules to allow administrative review of determinations made pursuant to the emergency project rule.

The public policy objective underlying the statutory exemption of emergency projects from Agency permit and variance jurisdiction is to allow the undertaking of measures immediately necessary for protection of life or property without the delay of regulatory procedures and review. It is important to note that the proposed emergency project rule follows the statutory exemption from normal regulatory procedures; however, it is a limited exemption and is only intended to provide an expedited process to document the measures undertaken as emergency projects without an Agency variance or permit. This documentation will be useful for landowners seeking reimbursement for emergency measures and as proof of the lawfulness of the measures undertaken by the landowner. The rule will also ensure that the measures undertaken are confined to those immediately necessary to protect life or property.

3. Needs and benefits:

Since 2011, there have been numerous state declared emergency weather events, including the 2011 flooding, Hurricane Irene and Tropical Storm Lee. These weather events required prompt action both during the event itself and the remediation and recovery phase after the event. During and immediately after these events, the Agency primarily relied upon coordination with the NYS Department of Environmental Conservation (NYSDEC) for its regulatory response, because that agency had more staff in the field and was able to incorporate Agency review considerations into its immediate response actions. The proposed rule would provide a formal, responsive, and unified process, as well as better documentation of the Agency's regulatory involvement that would be useful to landowners and the public.

4. Costs:

There are no costs associated with the proposed regulations. The proposed rule is intended to codify the Agency's existing practices, and to provide a consistent, formal process for the Agency's response to emergencies. Currently, during emergency situations, the Agency seeks substantially the same information from landowners as is requested in the proposed rule. Accordingly, the proposed rule simply formalizes the Agency's existing practice.

Also, recognizing the exigency of emergency situations, the information that the Agency is requesting is very basic information and the minimum amount of information required in order for the Agency to determine that a proposal is an emergency project. Recent experience has shown the need for public and private landowners to have complete documentation from the Agency of measures undertaken during emergencies, as well as for the Agency and the NYS Department of Environmental Conservation (NYSDEC) to have better coordination when responding to emergencies in the Adirondack Park. The proposed rule will enhance coordination

between the Agency and NYSDEC as the proposed rule better aligns the Agency's process with NYSDEC's and even relies upon information submitted to NYSDEC, which reduces the regulatory burden on applicants. The proposed rule will provide a more efficient process for the Agency and the applicant as well as a less costly overall process for responding to emergencies.

5. Local government mandates:

The proposed rules will not impose any responsibilities on local government entities, unless the local government is the project sponsor.

6. Paperwork:

The proposed rule provides a procedure for obtaining a determination from the Agency that land use or development is, in fact, an "emergency project." The Agency will issue either an Emergency Certification or an Emergency Recovery Authorization. In the event of an emergency, the project sponsor may request the Agency to issue an Emergency Certification either before undertaking the emergency project or within 30 days of undertaking the emergency project. In order to issue an Emergency Certification, the Agency will require the project sponsor to provide the Agency with sufficient information to determine that an emergency is (or was) ongoing or occurred within the last 30 days and that the emergency project is (or was) limited in scope to that necessary to address the emergency. The Emergency Recovery Authorization is intended for the follow-up response to the emergency. The project sponsor will be required to obtain authorization from the Agency prior to undertaking the emergency project. In addition, the project sponsor will be required to submit sufficient information to the Agency through a standard application form that will allow the Agency to make a determination that the proposal satisfies the criteria for an Emergency Recovery Authorization.

Both the Certification and the Authorization provide the project sponsor with Agency documentation that land use or development does not (or did not) require a permit, order or variance. This is important as it provides landowners with documentation that work done during an emergency is lawful for Agency purposes. In addition, this documentation may facilitate emergency aid reimbursement.

7. Duplication:

The proposed regulations do not duplicate, overlap, or conflict with any other local, state, or federal requirements.

8. Alternatives:

The Agency does not currently have a regulatory definition to establish when land use and development is an “emergency project.” The proposed regulation would provide clear parameters for obtaining a determination from the Agency that land use or development is an “emergency project.” The alternative is to continue with existing practice and review each proposal on a case by case basis without a clear regulatory definition of what constitutes an “emergency project.” The Agency has deemed this as unacceptable and counterproductive to Agency efficiency and not in keeping with the Agency’s goal of providing clear and consistent responses to the public.

9. Federal standards:

The proposed regulations do not involve any federal statutory authority or standards.

10. Compliance schedule:

The proposed regulations would apply prospectively, effective immediately upon their adoption. It is anticipated that regulated persons would be able to comply with these regulations immediately.

ADIRONDACK PARK AGENCY

STATEMENT IN LIEU OF REGULATORY FLEXIBILITY ANALYSIS

The proposed rules would not impose additional reporting, record keeping or other compliance requirements on small businesses and local governments. Instead, they would provide an efficient process for relieving a regulatory burden on entities undertaking an “emergency project” as defined by the Adirondack Park Agency in the proposed rules. These entities may include small businesses or local governments.

The proposed rules would define “emergency project” and provide a procedure for obtaining a determination from the Agency that land use or development is an “emergency project,” and for administratively challenging that determination.

The proposed rules would not preclude people from undertaking jurisdictional land use or development. Rather, under the proposed rule, if land use or development is determined to be an “emergency project,” it would be exempt from the Agency’s normal regulatory review procedures, and subject to streamlined procedures.

Accordingly, a Regulatory Flexibility Analysis is not required for the proposed rules.

ADIRONDACK PARK AGENCY

STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS

The proposed rules, applicable throughout the Adirondack Park, would have the same effect whether the area is considered rural or not. The proposed rules impose no additional reporting, record keeping or other compliance requirements on small businesses, or on public or private entities in rural areas. Instead, they would provide an efficient process for relieving a regulatory burden on those entities undertaking an “emergency project” as defined by the Adirondack Park Agency in the proposed rules.

The proposed rules would define “emergency project” and provide a procedure for obtaining a determination from the Agency that land use or development is an “emergency project,” and for administratively challenging that determination.

The proposed rules would not preclude people from undertaking jurisdictional land use or development. Rather, under the proposed rule, if land use or development is determined to be an “emergency project,” it would be exempt from the Agency’s normal regulatory review procedures, and subject to streamlined procedures.

Accordingly, a Rural Area Flexibility Analysis is not required for the proposed rules.

ADIRONDACK PARK AGENCY

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

A job impact statement (JIS) is not submitted for these proposed rules because they are not expected to create any substantial adverse impact upon jobs and employment opportunities in the Adirondack Park.

The proposed rules would define “emergency project” and provide a procedure for obtaining a determination from the Agency that land use or development is an “emergency project,” and for administratively challenging that determination.

The proposed rules would not preclude people from undertaking jurisdictional land use or development. Rather, under the proposed rule, if land use or development is determined to be an “emergency project,” it would be exempt from the Agency’s normal regulatory review procedures, and subject to streamlined procedures.

Section 201-a of SAPA defines job impact as a “change in the number of jobs and employment opportunities” attributable to the adoption of the rule. A “substantial adverse impact on jobs” is defined as “a decrease of more than 100 full-time annual jobs and employment opportunities.”

There will be no change in employment opportunities due to the proposed rules. Under the proposed rules, projects that do not qualify as “emergency projects” will be reviewed pursuant to the Agency’s normal review processes. The proposed rules simply provide an expedited regulatory response for “emergency projects.”

Accordingly, A JIS is not required for the proposed rules.