

# Notice of Proposed Rule Making

Department of Environmental Conservation

(SUBMITTING AGENCY)

**TEXT/SUBSTANCE AND ATTACHMENTS SUBMITTED:**  **E-MAIL** (nysregister@dos.state.ny.us)  
 **DISK**

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

**1. A. Proposed action:**

Amends 6 NYCRR Parts 608, 621.4 and 673 to comply with Chapter 364 of the Laws of 1999, and also amends Part 673 to comply with Chapter 178 of the Laws of 2006.

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 Attached is a brief description of the objection that caused/is causing the prior notice to be withdrawn [SAPA §202(1)(e)].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:**

Statutory authority to make these rules exists in Article 3 Title 3 and Article 15 Title 5 of the New York State Environmental Conservation Law.

**3. Subject of the rule:**

Requires all dam owners to operate and maintain dams in a safe condition and adopts requirements for owner dam safety programs, permitting and enforcement.

**4. Purpose of the rule:**

To amend 6 NYCRR Parts 608, 621.4 and 673 to comply with Chapter 364 of the Laws of 1999, and amend Part 673 to comply with Chapter 178 of the Laws of 2006.

**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.

A public hearing is not required by law, but is scheduled below.

Time:

Date:

Location:

10AM - 2PM

April 15, 2008

Locust Grove, 2683 South Road Poughkeepsie

10AM - 2PM

April 18, 2008

Holiday Inn, 800 Jefferson Road Rochester

10AM - 2PM

May 2, 2008

NYSDEC, 625 Broadway, Albany NY 12233

**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 optional explanation is submitted regarding the nonaccessibility of one or more hearing sites.

8. *Terms of rule* (SELECT ONE SECTION):

- A.  The full text of the rule is attached since it is under 2,000 words.
- B.  A summary of the rule is attached since the full text of the rule is over 2,000 words.
  - Full text is posted at the following State website: http://www.dec.ny.gov/
  - 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 Ms. Jamie Woodall  
 Agency Name NYSDEC, Bureau of Flood Protection and Dam Safety  
 Office address 625 Broadway, 4th Floor, Albany, NY 12233-3504  
 Telephone 518-402-8151 E-mail: jvwoodal@gw.dec.state.ny.us

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 is under 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) 15 days after last public hearing .

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 material required by statute).
- No additional material required by statute.

15. *Regulatory Agenda* (The **Division of Housing and Community Renewal; Workers' Compensation Board;** and the departments of **Agriculture and Markets, Banking, Education, Environmental Conservation, Family Assistance, Health, Insurance, Labor, Motor Vehicles** and **State** and other department specified by the Governor or his designee *must complete* this item. If your agency has an optional agenda published, that should also be indicated below):

- This action was a Regulatory Agenda item in the first January issue of the 2007 (year) *Register*.
- This action was a Regulatory Agenda item in the last June issue of the \_\_\_\_\_ (year) *Register*.
- This action was not under consideration at the time this agency's Regulatory Agenda was submitted for publication in the *Register*.
- Not applicable.

16. **5-Year 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 decision 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 the listing of the rule in the regulatory agenda.
- 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.

*Continued . . .*

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 Robert Simson Signature \_\_\_\_\_  
Address NYSDEC Division of Water, 625 Broadway, Albany, NY 12233  
Telephone 518-402-8231 E-Mail rjsimson@gw.dec.state.ny.us  
Date 1/29/2008

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**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. **Collate the original notice and attachments** as: (1) form; (2) text or summary of rule; and, ***if any***, (3) regulatory impact statement, (4) regulatory flexibility analysis for small businesses and local governments, (5) rural area flexibility analysis, (6) job impact statement. Submit the originals, as collated **and ONE copy of that collated set**.
3. **Mail or hand deliver hard copy of rule making package to:** Department of State, Division of Administrative Rules, 41 State Street, Suite 330, Albany, NY 12231-0001.
4. **E-mail text/substance and attachments to:** nysregister@dos.state.ny.us **or** attach a disk containing the text/substance and required material.