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Notice of Proposed Rule Making

Adirondack Park Agency
(SUBMITTING AGENCY)

[x] 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. *Proposed action:*

Repeal of	section 587.1	Title 9	NYCRR
Addition of	new section 587.1	Title 9	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. [x] This rule was previously proposed as a consensus rule making under I.D. No. APA-09-16-00005 - P . Attached is a brief description of the objection that caused/is causing the prior notice to be withdrawn [SAPA §202(1)(e)].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 Section 804(9); Public Officers Law Section 87

3. *Subject of the rule:*

Access to Agency Records

4. *Purpose of the rule:*

To conform Adirondack Park Agency rules to the Public Officers Law and rules promulgated by the Committee on Open Government.

5. *Public hearings* (check box and complete as applicable):

[ ] A public hearing is not scheduled. (*SKIP TO ITEM 8*)

[x] 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:*
07:00 pm	11/15/2016	APA, 1133 NYS Rt 86, Ray Brook, NY
11:00 am	11/14/2016	DEC, 625 Broadway, Albany, NY

6. *Interpreter services* (check only if a public hearing is scheduled):
   [x] 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):
   [x] 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. [x] 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 Paul Van Cott, Associate Attorney
Agency Name Adirondack Park Agency
Office address PO Box 99
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]).

[x] 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*) _____.

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).

[x] 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.

[x] 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:
[x] 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. [x] 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. [x] 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. [x] 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 Paul Van Cott *Signature* _____

Address PO Box 99 Ray Brook, NY 12977

Telephone (518) 891-4050 *E-Mail* APARuleMaking@apa.ny.gov

Date _____

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.

ADIRONDACK PARK AGENCY
September 13, 2016

DESCRIPTION OF THE OBJECTION THAT IS CAUSING NOTICE OF PROPOSED RULEMAKING I.D. No. APA-09-16-00005-P TO BE WITHDRAWN

2016 Rulemaking

The proposed rule responds to comments provided to Agency staff by three members of the New York State Assembly during the public comment period for proposed consensus rule I.D. No. APA-09-16-00005-P. Due to these comments, the proposed consensus rule is withdrawn in favor of a formal rulemaking process.

Staff had developed the original draft rule with input from the Committee on Open Government (COG). That agency complimented the brevity of staff's draft rule and indicated that it met the substantive requirements of the Freedom of Information Law (FOIL).

The Agency proposed the draft as a consensus rule after obtaining constructive feedback and support on the rule from Adirondack local government and environmental representatives.

In their comment letter on the consensus rule, the Assembly members requested clarification of the different appeal processes applicable to denials of (1) requests for access to records and (2) requests for exceptions to disclosure. They also requested that a subdivision be added to the rule concerning fees applicable to FOIL requests. Finally, the Assembly members noted that the Agency's existing rules are more open to

oral requests for documents than the proposed consensus rule, and suggested that the Agency should offer additional opportunity for public comment on that aspect of the rule.

The proposed rule responds to the comments provided by the Assembly members. It still advances the goal of updating the Agency's FOIL rules to eliminate requirements that duplicate those already set forth in FOIL and COG's rules in 21 NYCRR Part 1401.

The proposed rule will make it easier for the Agency to keep its FOIL rules current in the future, while maintaining the Agency's strong policy of openness and accessibility to the public.

Section 587.1 is repealed and a new section 587.1 is adopted to read as follows:

587.1 Access to agency records.

(a) *Purpose.* The agency shall provide access to records in conformance with the requirements and procedures set forth in Article 6 of the Public Officers Law, entitled "Freedom of Information Law," and its implementing regulations in 21 NYCRR Part 1401. This section provides regulations specific to the agency's responsibilities under those authorities. Additional information about the agency's implementation of the Freedom of Information Law is on the agency's website at www.apa.ny.gov.

(b) *Records access officer.* One or more designated project administrators shall be the agency's records access officer(s) with the responsibilities set forth herein and in 21 NYCRR Part 1401. The business address for the records access officer is: Adirondack Park Agency, P.O. Box 99, Ray Brook, New York 12977, and the email address is: FOIL@apa.ny.gov. In the absence of the records access officer, any agency attorney except the counsel may be designated to serve in that capacity.

(c) *Requests for access to records.* Requests for access to records may be submitted to the agency in writing by email, mail or in person. Record request forms are available at the Adirondack Park Agency, 1133 NYS Route 86, Ray Brook, New York and on the agency's website at www.apa.ny.gov. Oral requests for access to records may also be allowed, although the agency may require a written request. The agency shall respond to requests for access to records in conformance with 21 NYCRR Part 1401. The agency will provide requested records by email or mail, or make them available for inspection at the Adirondack Park Agency, 1133 NYS Route 86, Ray Brook, New York.

(d) *Hours for public inspection.* The agency shall accept requests for access to records

and produce records during all regular business hours. Except on State holidays, or during weather or other emergencies, regular business hours are 8:30 a.m. to 5:00 p.m., Monday through Friday.

(e) *Fees.* (1) No fee will be charged for electronic copies of records; (2) Fees of 25 cents per page may be charged for photocopies of more than fifty pages of records not exceeding 9 by 14 inches in size; and (3) Other fees may be charged for the actual cost of reproducing records in accordance with 21 NYCRR Part 1401.

(f) *Requests for exceptions from disclosure of records.* Requests for exceptions from disclosure of records shall be governed by section 89(5) of the Freedom of Information Law. A person submitting records to the agency may identify information therein for which an exception from disclosure is requested pursuant to that section and shall specify the facts, in reasonable detail, supporting the request. The records access officer shall identify the person(s) within the agency who shall have custody and/or access to such information and the manner of safeguarding against unauthorized access to such information until fifteen days after the entitlement to such exception has been finally determined or such further time as ordered by a court of competent jurisdiction.

(g) *Appeals.* Appeals shall be governed by the Freedom of Information Law or 21 NYCRR Part 1401, as applicable. Any person denied access to records, or denied a requested exception from disclosure of records, in whole or in part, may appeal in writing to the agency's counsel. The business address of the agency's counsel is Adirondack Park Agency, P.O. Box 99, Ray Brook, New York 12977.

ADIRONDACK PARK AGENCY
September 13, 2016

REGULATORY IMPACT STATEMENT
2016 Rulemaking

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...." Pursuant to Article 6 of the Public Officers Law (Freedom of Information Law ("FOIL")), APA is required to adopt regulations, in addition to statewide rules implementing FOIL promulgated by the Committee on Open Government ("COG"), necessary for APA's implementation of FOIL.

2. Legislative objectives:

The goal of this rule making is to eliminate Agency FOIL rules that duplicate requirements and procedures of Article 6 of the Public Officers Law and COG's FOIL rules in 21 NYCRR Part 1401.

3. Needs and benefits:

FOIL is set forth in Article 6 of the Public Officers Law ("POL"). The statute empowers the Committee on Open Government to adopt rules for the administration of FOIL, which it has done in 21 NYCRR

Part 1401. Other agencies and local governments, including APA, are required by FOIL to adopt rules that conform to FOIL and the rules set forth in 21 NYCRR Part 1401.

As currently written, most of 9 NYCRR § 587.1 duplicates FOIL and/or COG's rules, or no longer conforms with FOIL due to changes to the law that have occurred since 587.1 became effective in 1979. The proposed rules would ensure conformance with FOIL and COG's rules without duplication of those requirements and procedures, by limiting Agency FOIL regulations to those specifically necessary for the Agency's implementation of FOIL.

4. Costs:

There would be no costs associated with the proposed rules.

5. Paperwork:

There would be no increased paperwork associated with the proposed rules

6. Local government mandates:

The proposed rules would not impose any responsibility on local governments.

7. Duplication:

The proposed rules would eliminate duplicative regulations.

8. Alternatives:

Alternatives to the proposed rules include updating existing APA FOIL rules to be consistent with all of the changes that have occurred to FOIL since 1979 or repealing and replacing the existing rules with uniform FOIL rules developed by COG. Both of these alternatives would duplicate rules in FOIL and/or 21 NYCRR Part 1401, requiring APA to continue to amend its regulations in the future to keep pace with amendments to FOIL and/or COG's rules implementing FOIL.

9. Federal standards:

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

10. Compliance schedule:

The proposed regulations would apply prospectively, effective immediately upon approval and filing.

ADIRONDACK PARK AGENCY
September 13, 2016

STATEMENT IN LIEU OF REGULATORY FLEXIBILITY ANALYSIS
2016 Rulemaking

The proposed rules would not impose additional reporting, record keeping or other compliance requirements on small businesses and local governments.

The proposed rules would eliminate Adirondack Park Agency FOIL rules that duplicate requirements and procedures of Article 6 of the Public Officers Law and the Committee on Open Government's (COG) FOIL rules in 21 NYCRR Part 1401.

The proposed rules will only serve to improve the consistency of APA's FOIL rules with FOIL and 21 NYCRR Part 1401 for the benefit of small businesses and local governments.

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

ADIRONDACK PARK AGENCY
September 13, 2016

STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS
2016 Rulemaking

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 eliminate existing rules in favor of existing statewide rules implementing Article 6 of the Public Officers Law ("FOIL") set forth at 21 NYCRR Part 1401. The Agency's rules would only include additional regulations specific to its implementation of FOIL. This would ensure Adirondack Park Agency rules governing access to records conform to state law and rules regarding FOIL.

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

ADIRONDACK PARK AGENCY
September 13, 2016

STATEMENT IN LIEU OF JOB IMPACT STATEMENT
2016 Rulemaking

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 goal of this rule making is to eliminate Agency FOIL rules that duplicate requirements and procedures of Article 6 of the Public Officers Law and the Committee on Open Government's (COG) FOIL rules in 21 NYCRR Part 1401. The proposed rules would ensure conformance with FOIL and COG's rules without duplication of those requirements and procedures, by limiting Agency FOIL regulations to those specifically necessary for the Agency's implementation of FOIL.

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. The proposed rules will only serve to improve the consistency of APA's FOIL rules with FOIL and 21 NYCRR Part 1401.

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