

Regulatory Flexibility Analysis for Small Businesses and Local Governments

1. Effect of rule:

This rule making is designed to guide the Department of Environmental Conservation's (department) implementation of 2022 amendments to the Freshwater Wetlands Act (the Act). The amendments to the Act will expand the acreage of regulated wetlands across the State beginning on January 1, 2025. This expansion in jurisdiction will increase the number of permits required under the Act. This rule applies statewide to all local governments and any small businesses outside the Adirondack Park engaged in activities that alter regulated freshwater wetlands and regulated adjacent areas. Based on the most recent Empire State Development information on small business, the department estimates that approximately 10% of the 474,542 small businesses in New York State could be involved with land development and potentially need a freshwater wetlands permit pursuant to this rule.

2. Compliance requirements:

This rule making does not require any reporting, record keeping, or other affirmative act for any small business or local government.

3. Professional services:

No professional services are required of small businesses or local governments to comply with the provisions of this rule making. However, the department's expanded jurisdiction over freshwater wetlands will mean that small businesses and local governments might need to hire professional services more frequently to help them navigate the regulatory process when pursuing large and complicated projects. The extent of professional services needed for a project are site-specific and would depend

on the nature of the activity and the adverse impacts on the wetland. Permits issued by the department for small scale projects that impact regulated wetlands generally require little, if any, professional services, while permits for large and complicated development projects usually require professional services because those projects involve highly technical mitigation plans to compensate for losses of wetlands.

To limit the potential need for professional services, these proposed regulations provide procedures for landowners to request jurisdictional determinations and wetland delineations free of charge.

4. Compliance costs:

The proposed regulations do not require any initial capital costs nor any annual costs for small business or local governments because the rule only clarifies the types and extent of wetlands that will be regulated under the Act , as amended in 2022. Small businesses and local governments will not be required to expend any additional costs unless they seek to conduct a development activity within a regulated wetland or regulated adjacent area, or for nutrient poor wetlands and vernal pools, within 300 feet or 800 feet, respectively. Projects requiring permits will be subject to application fees, as provided in Environmental Conservation Law (ECL) Article 70, that are commensurate with the scope of the project and potential impacts. For example, projects covered by general permits will not require application fees. Projects to construct a single-family dwelling will require a \$300 application fee, while large commercial development projects will require a \$1,000 fee.

5. Economic and technological feasibility:

The proposed regulations clarify statutory provisions regarding which wetlands

are regulated under the Act and does not directly place any additional requirements on small businesses or local governments engaged in land development. While the department estimates that the statutory changes being implemented with this rule will indirectly result in increases in wetland permitting, small businesses and local governments engaged in land development already address these types of regulatory requirements as part of the project development process. Thus, the implementation of this rule making is both economically and technologically feasible.

6. Minimizing adverse impact:

This rule making proposes a transition period, during which time, projects that achieved certain development thresholds before January 1, 2025, may continue without a new jurisdictional determination. This provides for the fair, expeditious, and thorough administrative review of freshwater wetlands permits, consistent with ECL § 70-0103 (Uniform Procedures), and properly balances environmental and economic interests, consistent with ECL § 24-0103. Projects requiring a freshwater wetlands permit, under the existing regulatory provisions, may proceed without a new jurisdictional determination until expiration of the issued permit. After the permit expires, applicants will need a new jurisdictional determination that incorporates all the regulatory provisions described in this rule making prior to applying for a new permit. Projects that do not require a freshwater wetlands permit, under the existing regulatory provisions, may proceed without a new freshwater wetlands jurisdictional determination for either 3.5 or 2 years if they meet at least one of the three thresholds in proposed 6 NYCRR 664.1 (c) and (d). Applicants will need a new jurisdictional determination that incorporates all the regulatory provisions described in this rule making following the

designated time frame or if their project does not meet one of the three thresholds.

7. Small business and local government participation:

The department conducted a comprehensive two-phase outreach plan to engage a wide range of stakeholders and solicit input for the development of this rule making. Phase 1 focused on raising general awareness about wetlands, explaining the statutory changes, and soliciting input before the department drafted regulatory language. Phase 1 included multiple in-person and remote meetings with more than 30 stakeholder groups representing small business interests, local governments, and other groups. Phase 2 focused on seeking specific input from stakeholders on potential regulatory language through an Advanced Notice of Proposed Rule Making (ANPRM). Phase 2 included more formal efforts to elicit feedback from stakeholders and included publication of the ANPRM in the State Register and the department's Environmental Notice Bulletin (ENB). The ANPRM included pre-proposal draft regulatory text and questions targeting eight specific areas of interest. To assure stakeholders representing small businesses and local governments had an opportunity to participate in the ANPRM, the department sent email messages to all stakeholders involved in the Phase 1 outreach, as well as other interested groups representing small business interests including realtors, property developers, loggers, and environmental consultants to inform them of the ANPRM. In addition, the department conducted more than a dozen webinars to describe the ANPRM and solicit direct feedback. Combined, these webinars reached more than 1,300 participants. This rule making incorporates feedback on the ANPRM from stakeholders, including small businesses and local governments. In addition to previous outreach to small businesses and local governments, the

department will notice these proposed regulations in the department's ENB, will send email messages to all stakeholders involved in Phase 1 and 2 outreach activities, and will schedule informational webinars to explain the regulations.

8. Initial Review of Rule:

The department will conduct an initial review of the rule within three years as required by SAPA § 207(1)(b).