

Notice of Proposed Rulemaking
Proposed Part 504
(Regulation of Transaction Monitoring and Filtering Systems)

Regulatory Impact Statement

1. Statutory Authority.

Pursuant to Sections 37(3) and 37(4) of the New York Banking Law (the "BL"), the Department of Financial Services (the "Department") has broad authority to require reports from state-chartered banks, private banks, trust companies, credit unions, licensed branches and agencies of foreign bank corporations, licensed check cashers and licensed money transmitters (each a "Covered Institution"). The Department also has broad authority to prescribe the form of all such reports pursuant to these two provisions. In addition, Section 302 of the Financial Services Law ("FSL") provides the Department with equally broad authority to adopt regulations relating to "financial products and services" which are broadly defined in the FSL to mean essentially any product or services offered by a regulated institution. Accordingly, the Department has ample authority to adopt the proposed regulation.

In addition, Section 672 of the BL imposes potential criminal liability on individuals submitting reports containing false entries or statements.

2. Legislative Objectives.

The BL and the FSL are both intended to ensure the safe and sound operation of the financial system. The proposed regulation is intended to ensure that the financial system is not used for money laundering, sanctions violations, or terrorist funding purposes. This goal is perfectly consistent with the objective of the BL and FSL. Federal Bank Secrecy Act/Anti-Money Laundering laws and regulations and Office of Foreign Assets Control requirements (together, "Requirements") generally prohibit financial institutions from engaging in or facilitating money laundering, sanctions violations, and funding for terrorist or criminal organizations and countries.

The proposed rule creates a more granular framework for a chief compliance officer or their functional equivalent at a Covered Institution to follow in designing, implementing and maintaining a program that ensures compliance by their institutions with the Requirements.

3. Needs and benefits.

The proposed rule does not change existing compliance requirements imposed on Covered Institutions. Rather, it mandates that the chief compliance officer at these institutions file an annual certification with the Department regarding compliance by their institution with the Requirements. It is the Department's intent that this certification requirement will cause compliance officers to proactively ensure compliance by their institutions with the Requirements.

4. Costs.

All Covered Institutions are currently subject to existing federal Requirements. The proposed regulation provides more granular guidance and requires the chief compliance officer or their functional equivalent at a Covered Institution to certify compliance with the proposal. It is the Department's intent that this certification requirement will cause compliance officers to proactively ensure compliance by their institutions with existing federal Requirements. The cost of complying with the proposed regulation generally should have been incurred previously to ensure compliance. Hence, it is arguable that only costs associated with the proposed regulation reflect costs that institutions should have expensed in the past.

5. Local government mandates.

This proposal imposes no program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork.

The regulation does not change the process utilized by the Department to determine compliance with the Requirements. However, it does require Covered Institutions to document their compliance with the requirements of this proposal. Nevertheless, it is not believed that this requirement will be significant as Covered Institutions are already required to maintain compliance programs applicable to the Requirements. This proposal will only require that such compliance be documented.

7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations.

8. Alternatives.

The Department is not aware of any alternatives to the proposed rule.

9. Federal Standards.

Not applicable.

10. Compliance Schedule.

The proposed rule will become applicable upon formal adoption.

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Regulatory Flexibility Analysis for Small Businesses and Local Governments

1. Effect of the Rule:

The proposed rule does not have any impact on local governments.

The proposed rule sets forth a methodology to be used by the Banking Division of the Department of Financial Services (the "Department") to assess the processes and systems used by chartered banks, private banks, trust companies, licensed branches and agencies of foreign banking corporations, licensed check cashers and licensed money transmitters (each a "Covered Institution") to comply with federal Bank Secrecy Act, Anti-Money Laundering laws and regulations and Office of Foreign Assets Control requirements (together, "Requirements"). The regulation should not significantly increase existing compliance costs of these entities. Rather, this new regulation requires that the chief compliance officer or their functional equivalent at these entities take steps to ensure compliance by their institutions with existing federal Requirements. Those Requirements, which are implemented under both federal and state law, protect against money laundering, sanctions violations, and funding for terrorist or criminal organizations and countries.

2. Compliance Requirements:

The proposed rule does not change existing compliance requirements imposed on Covered Institutions, except that it creates a more granular framework for the chief compliance officer or their functional equivalent for these institutions to follow in designing, implementing and maintaining a program that ensures compliance by their institutions with existing federal Requirements. It is the Department's intent that this new certification requirement will cause compliance officers or their functional equivalents to proactively ensure compliance by their institutions with federal Requirements.

3. Professional Services:

None beyond existing costs to comply with the Requirements under applicable federal and state law.

After their review of the requirements of this proposal, certain institutions may decide to engage third party service providers to ensure compliance with applicable federal and state laws and regulations.

4. Compliance Costs:

All Covered Institutions are currently subject to existing federal Requirements. Depending on the size of the institution, regulatory compliance systems or processes may be manual or automated. The proposed regulation provides more granular guidance and requires the chief compliance officer or their functional equivalent at a Covered Institution to certify compliance with the proposal. It is the Department's intent that this certification requirement will cause compliance officers to proactively ensure compliance with existing federal requirements. The cost of compliance with the new rule generally should have been incurred previously to ensure compliance. Hence, it is arguable that only costs associated with the proposed regulation reflect costs that institutions should have incurred in the past.

5. Economic and Technological Feasibility:

Covered Institutions should already have in place processes and systems, whether manual or automated to ensure compliance with the Requirements. At most, the proposed regulation will focus the attention of institutions on the adequacy of existing systems.

6. Minimizing Adverse Impacts:

As noted above, the proposed regulation does not impose a substantially new regulatory requirement. Rather, it is intended to cause institutions to review their systems and processes to ensure their adequacy.

7. Small Business and Local Government Participation:

This regulation does not impact local governments. Covered Institutions will be able to comment on the rule during the public comment period.

As noted above, under existing federal and state law designed to protect against money laundering and funding for terrorists organizations and countries, Covered Institutions already must have systems and processes in place to protect against money laundering and funding for terrorist organizations and countries. The proposed regulation is intended merely to foster compliance with existing requirements.

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Job Impact Statement.

A Job Impact Statement for the proposed amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

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Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the amendments.