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E nvironmental
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Environmental
Review
Procedures
in
NYCRR, Part 617





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History

- ✓ SEQR was first signed into law by then Governor Hugh Carey in 1975.
- ✓ SEQR has been revised a number of times. Most recently in July of 2000.
- ✓ The legislation was written to require a “suitable balance” between social, economic, and environmental factors.



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Legislative Intent

§ 617.1 Authority, Intent & Purpose

(a) This Part is adopted pursuant to sections 3-0301(1)(b), 3-0301(2)(m) and 8-0113 of the Environmental Conservation Law to implement the provisions of the State Environmental Quality Review Act (SEQR).

(b) In adopting SEQR, it was the Legislature's intention that all agencies conduct their affairs with an awareness that they are stewards of the air, water, land, and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.

(c) The basic purpose of SEQR is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQR requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.

(d) It was the intention of the Legislature that the protection and enhancement of the environment, human and community resources should be given appropriate weight with social and economic considerations in determining public policy, and that those factors be considered together in reaching decisions on proposed activities. Accordingly, it is the intention of this Part that a suitable balance of social, economic and environmental factors be incorporated into the planning and decision-making processes of state, regional and local agencies. It is not the intention of SEQR that environmental factors be the sole consideration in decision-making.



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§617.2 DEFINITIONS

(b) Actions include:

- (1) projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that:
 - (i) are directly undertaken by an agency; or
 - (ii) involve funding by an agency; or
 - (iii) require one or more new or modified approvals from an agency or agencies;
- (2) agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions;
- (3) adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; and
- (4) any combinations of the above.

(c) Agency means a state or local agency.



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“Significant”

Not defined in State Law What qualifies as “significant” is usually up to the reviewing agency. Designations in comprehensive or Strategic Plans may help determine what is significant

§617.2 DEFINITIONS

(I) Environment means the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archaeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health.

This broadly worded definition makes it clear that the scope of SEQR review may go beyond affects on “natural” systems.

Definitions



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§617.2 DEFINITIONS

(ad) Project sponsor means any applicant or agency primarily responsible for undertaking an action.

The developer, basically. It could be the Municipal Board if the action is legislative.

s) Involved agency means an agency that has jurisdiction by law to fund, approve or directly undertake an action.

If an agency will ultimately make a discretionary decision to fund, approve or undertake an action, then it is an "involved agency", notwithstanding that it has not received an application for funding or approval at the time the SEQR process is commenced. The lead agency is also an "involved agency".

An involved agency is legally bound to participate in SEQR review.



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(t) Interested agency means an agency that lacks the jurisdiction to fund, approve or directly undertake an action but wishes to participate in the review process because of its specific expertise or concern about the proposed action. An "interested agency" has the same ability to participate in the review process as a member of the public.

An interested agency may choose to participate. the lead agency and others are required to seek their Input at various stages of the review.

(u) Lead agency means an involved agency principally responsible for undertaking, funding or approving an action, and therefore responsible for determining whether an environmental impact statement is required in connection with the action, and for the preparation and filing of the statement if one is required.

Other responsibilities include review coordination public hearings, acceptance of EIS's etc



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ai) Type I action means an action or class of actions identified in section 617.4 of this Part, or in any involved agency's procedures adopted pursuant to section 617.14 of this Part.

Because these actions are more likely to have significant impacts different procedural requirements apply.

(aj) Type II action means an action or class of actions identified in section 617.5 of this Part.....

If an action is clearly a “Type II” no further review is required pursuant to SEQR

(ak) Unlisted action means all actions not identified as a Type I or Type II action in this Part, or, in the case of a particular agency action, not identified as a Type I or Type II action in the agency's own SEQR procedures.



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(m) Environmental assessment form (EAF) means a form used by an agency to assist it in determining the environmental significance or nonsignificance of actions. A properly completed EAF must contain enough information to describe the proposed action, its location, its purpose and its potential impacts on the environment. The model full and short EAFs contained in appendices A and C of section 617.20 of this Part may be modified by an agency to better serve it in implementing SEQR, provided the scope of the modified form is as comprehensive as the model.

This is the initial cataloging of the project and its potential affects. There is a long form and a short form. This information is used to determine if further review (EIS) is required.



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§617.2 DEFINITIONS

af) Scoping means the process by which the lead agency identifies the potentially significant adverse impacts related to the proposed action that are to be addressed in the draft EIS including the content and level of detail of the analysis, the range of alternatives, the mitigation measures needed and the identification of nonrelevant issues. Scoping provides a project sponsor with guidance on matters which must be considered and provides an opportunity for early participation by involved agencies and the public in the review of the proposal.

What issues will the review address?

(ag) Segmentation means the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance.

Avoid breaking up a large project into phases that, taken out of Proper their context, may appear to have a less significant environmental impact.



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n) Environmental impact statement (EIS) means a written "draft" or "final" document prepared in accordance with sections 617.9 and 617.10 of this Part. An EIS provides a means for agencies, project sponsors and the public to systematically consider significant adverse environmental impacts, alternatives and mitigation. An EIS facilitates the weighing of social, economic and environmental factors early in the planning and decision-making process. A draft EIS is the initial statement prepared by either the project sponsor or the lead agency and circulated for review and comment. An EIS may also be a "generic" in accordance with section 617.10, of this Part, a "supplemental" in accordance with paragraph 617.9(a)(7) of this Part or a "federal" document in accordance with section 617.15 of this Part.

If the EAF shows the potential for significant negative environmental impacts, a more complete review is required in the form of an Draft EIS.



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§617.2 DEFINITIONS

p) Findings statement means a written statement prepared by each involved agency, in accordance with section 617.11 of this Part, after a final EIS has been filed, that considers the relevant environmental impacts presented in an EIS, weighs and balances them with social, economic and other essential considerations, provides a rationale for the agency's decision and certifies that the SEQR requirements have been met.

This is usually the last step in the SEQR process.



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Step 1: Does the proposal qualify as an “action” under SEQR?

When a municipality has site plan review, zoning, etc the majority of development qualifies as an “action” requiring some review under SEQR. However if a development is proposed that requires no approval or funding by a public agency, chances are it is **not** subject to review.

For example:

- 1) The municipality in question has no zoning or local review of development, aside from building permits (non-discretionary)
- 2) No other approvals from a state or local agency are needed.
- 3) No public funding is being used.

This action is not covered under SEQR. That being said, this doesn't happen too often, especially with large projects.

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Step 2: Classifying the Action

If the proposal qualifies as an “action” subject to SEQR review, then it’s time to classify it as a Type II*, Type I**, or unlisted.

Type I’s and unlisted actions require further review. For those actions that are clearly Type II, SEQR review is finished. Although it is not required, the reviewing agency may want to include some documentation to show that the action is properly classified as a Type II.

* NYCRR 6 §617.5 Type II Actions

** NYCRR 6 §617.4 ‘Type I Actions’

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Step 2a: Type I Actions

The following is required for Type I actions

- ✓ **Coordinated Review** with other involved agencies (explained later).
- ✓ The long form EAF

Step 2b: Type II Actions

Initially, coordinated review is not required.

- ✓ Involved agencies conduct SEQR review independently
- ✓ The Long or Short EAF may be used.

Step 2d: Unlisted Actions

- ✓ No further action pursuant to SEQRA is required

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Step 3: The Environmental Assessment Form

- ✓ The project sponsor / applicant completes Part 1 of the form & submits it to an involved agency together with any other applications that are required.
- ✓ When the lead agency is established (See step 4), that agency is responsible for completing Part 2 of the EAF, and as needed, Part 3.
- ✓ The requirement for a full EAF may be waived if a draft EIS is prepared and submitted with the application. Be aware that this may circumvent the scoping process.

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Step 4a & b: Coordinated Review

- ✓ (4a) If there is one involved agency, they become the "Lead Agency"
- ✓ (4b) If there are two or more involved agencies, the agency that initially receives the application circulates it to the other agencies that have been listed in Part 1 of the EAF. A lead agency is determined by agreement between all involved agencies within 30 Calendar Days.

Step 4c: Uncoordinated Review

- ✓ For uncoordinated review, each involved agency conducts their own review to make a "Determination of Significance" (See Step 5)

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Step 4c: Uncoordinated Review (cont)

- ✓ if **any** of the involved agencies issues a "**positive declaration**", coordinated review must commence (Step 4b).
- ✓ Conversely if all involved agencies make a **negative declaration**, SEQR review is completed.

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Step 5: Determination of Significance

This is based on:

- ✓ The whole action (no segmentation!) and criteria listed in §617.7 (c)
- ✓ EAF and other relevant information provided by the applicant.
- ✓ Involved agency input
- ✓ Public input (hearing?)
- ✓ For un-coordinated review you may end up doing it twice!
- ✓ One of three results:
 - 1) Positive Declaration
 - 2) Negative Declaration
 - 3) Conditioned negative Declaration

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Step 5a: Positive Declaration

- ✓ This occurs when the lead agency determines that the proposed action will have at least one significant adverse impact on the environment. A DEIS is the next required step.
- ✓ Lead Agency must make their determination within 20 days of receipt of all needed information.

Step 5b: Negative Declaration

- ✓ A negative declaration must:
 - list and analyze the areas of environmental concern.
 - support the assertion that the proposal will not have any significant adverse environmental impacts.

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Step 5b (cont) : Conditioned Negative Declaration

Requirements for a CND §617.7 (d):

- (1) For Unlisted actions involving an applicant, a lead agency may prepare a conditioned negative declaration (CND) provided that it:
 - (i) has completed a full EAF;
 - (ii) has completed a coordinated review in accordance with paragraph 617.6(b)(3) of this Part;
 - (iii) has imposed SEQR conditions pursuant to subdivision 617.3(b) of this Part that have mitigated all significant environmental impacts and are supported by the full EAF and any other documentation;
 - (iv) has published a notice of a CND in the ENB and a minimum 30-day public comment period has been provided. The notice must state what conditions have been imposed. An agency may also use its own public notice and review procedures, provided the notice states that a CND has been issued, states what conditions have been imposed and allows for a minimum 30-day public comment period; and

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Step 6: Scoping - What will the DEIS cover?

- ✓ May be initiated by the applicant or the Lead Agency.
- ✓ Project Sponsor provides the Lead Agency with the first draft pursuant to §617.8(f).
- ✓ Lead agency distributes.
- ✓ Scoping must include an opportunity for public input. NYSDEC suggests 20 days.
- ✓ Involved agencies should also participate.
- ✓ If the project involves an applicant, the Lead agency has 60 days from the receipt of the draft to finalize.
- ✓ If the Lead agency fails to do this, the applicant can prepare a DEIS based on the draft.



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Step 7: Draft Environmental Impact Statement §617.9

- ✓ The applicant has the right to prepare the DEIS.
- ✓ If the applicant refuses, the lead agency may prepare, charging the applicant for costs §617.13 (a).
- ✓ Lead Agency may charge a fee for review if it does not charge a fee for preparation §617.13 (a).
- ✓ **Contents** of the DEIS are based on the scoping document and requirements in §617.9 (b)(3).
- ✓ "It must analyze the significant adverse impacts and evaluate all reasonable alternatives. EISs must be analytical and not encyclopedic" §617.9 (b)(1)
- ✓ *"EISs must be clearly and concisely written in plain language that can be read and understood by the public. "§617.9 (b)(2)*

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Step 8: Acceptance of DEIS §617.9

- ✓ The applicant usually prepares and submits to the Lead Agency.
- ✓ Lead Agency has 45 days to assess scope and content and to determine if it is ready for public input.
- ✓ Not Adequate? Return to applicant with written explanation.
- ✓ Lead Agency has 30 days to assess adequacy of re-submitted draft.
- ✓ If the DEIS is ready for public review, a “Notice of Completion” should be filed and distributed pursuant to §617.12

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Step 9a: Public Input (required)

- ✓ The time for public comment must be a minimum of 30 days.
- ✓ May be extended by Lead Agency.
- ✓ If a public hearing is held, the period for public input must extend 10 calendar days after the close of the hearing.

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Step 9b: Public Hearing §617.9 (4) (optional)

- ✓ No sooner than 15 calendar days after and Notice of Completion for the DEIS
- ✓ No longer than 60 calendar days from Notice of Completion for the DEIS
- ✓ The Notice of Public Hearing must be 14 days before the hearing.
- ✓ Can be combined with other hearings that may be required by local law (subdivision).
- ✓ If a public hearing is held, the period for public input must extend 10 calendar days after the close of the hearing.
- ✓ Public hearings for SEQOR can be coordinated with any other required hearings (subdivision, etc)



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Step 10: Final EIS §617.9

- ✓ Within 45 calendar days of the close of any hearing
or:
Within 60 calendar days after the DEIS has been officially accepted, whichever occurs last.
- ✓ This may be extended pursuant to §617.9 (5) (ii)
- ✓ Lead Agency is responsible for adequacy of FEIS regardless of who prepares it.
- ✓ Content?? §617.9 (b)

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Step 11: Findings and Decision §617.9

- ✓ May be made simultaneously
- ✓ Yes, there is a decision to make !
- ✓ Each involved agency must make its own **written** findings statement no sooner than 10, but within 30 calendar days of filing of FEIS. §617.11 (b)
- ✓ Findings by each agency need to be filed with all other involved agencies and the applicant when adopted.
- 👍 A **positive findings** statement indicates that the action is approvable and avoids or minimizes adverse environmental impacts where reasonable.
- 👎 A **negative findings** statement indicates that the proposed action is not approvable.



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Paperwork: Publishing, Distribution, etc (§617.12)

- ✓ SEQR is process driven. The law requires that the reviewing agency use the process to make its' own value judgments about a proposed action and its affect on the environment.
- ✓ To satisfy the legal requirements of SEQR certain people need to be involved in the decision making process at certain times.
- ✓ (§617.12) is very clear about how documents are to be prepared filed, published and distributed.

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Forms, Technical Information, etc

- ✓ SEQR forms are available via the internet at the following site:

<http://www.dec.state.ny.us/website/dcs/seqr/seqrdld.html>

- ✓ You can download them or fill them out online with Acrobat Reader (free).
- ✓ This presentation borrows heavily from the following:
 - "SEQR Cookbook" NYSDEC, May 1998
 - <http://www.dec.state.ny.us/website/dcs/seqr>

Help



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