NEW YORK STATE OF OPPORTUNITY. Adirondack Park Agency

SHERMAN CRAIG
Chairman

TERRY MARTINO
Executive Director

MEMORANDUM

To: Terry Martino, Executive Director

From: James Townsend, Counsel

Re: Environmental Review Improvements

Date: May 3, 2017

We are pleased to welcome DEC staff for a presentation to the Board on its proposal to revise its rules regarding environmental impact review under New York's State Environmental Quality Review Act (SEQR). DEC's rules govern the SEQR review process for all local governments and State agencies, including APA.

Agencies and local governments are authorized to supplement DEC's rules with their own rules as long as they are consistent with SEQR. APA staff have been working closely with DEC staff on possible improvements to APA's supplemental SEQR rules. APA staff will discuss how the new DEC rules would affect APA and the status of outreach efforts on possible changes to APA's SEQR rules.

SEQR overview

Under SEQR, all actions to approve, fund or carryout activities fall into one of three classes:

- Type 1 actions, which are presumed to have a significant environmental impact requiring an Environmental Impact Statement (EIS);
- Type 2 actions, which have been determined to not require further SEQR review because of their lack of impact or for other reasons; and
- Unlisted actions, which may require an EIS depending on the specific facts of the activity involved.

Both Type I and unlisted actions require an initial environmental assessment which helps determine whether an EIS is required. While APA must follow DEC's Type 1 and Type 2 classifications for SEQR review purposes, APA's rules also include lists of APA-specific Type 1 and Type 2 actions.

Highlights of DEC's proposed SEQR rule changes[1]:

1. DEC proposes to add a number of new actions to the list of Type 2 projects, eliminating the need for SEQR review of most minor subdivisions and area variances, or for the installation of cellular antennas or repeaters on existing structures. DEC's proposed Type 2 list additions also demonstrate a clear policy preference in favor of green infrastructure, solar energy, affordable housing, and other smart growth activities.

2. DEC's existing SEQR rules make "scoping" an optional public process for determining what issues need to be assessed in an EIS. The proposed rules would make scoping mandatory.

Under DEC's proposed SEQR rules (legislative format) pertaining to scoping:

> "'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] irrelevant issues. Scoping, which starts with the analysis of potentially significant issues identified in the EAF, provides a project sponsor with [guidance on] a written outline of [matters] topics [which] that must be considered and provides an opportunity for early participation by involved agencies and the public in the review of the proposal."
>
> "The primary goals of scoping are to focus the EIS on potentially significant adverse impacts and to eliminate consideration of those impacts that are irrelevant or not significant [or nonsignificant]. Scoping should result in EISs that are focused on relevant, potentially significant, adverse environmental impacts. Scoping is [not] required for all EISs, and [. Scoping] may be initiated by the lead agency or the project sponsor."

In the following excerpt from the GEIS for its proposed SEQR rules, DEC explains its rationale for proposing to make scoping mandatory:

> "The changes to section 617.8 (scoping regulation) would make scoping mandatory, and provide a better link between the content of the environmental assessment process, the final written scope, and the draft environmental impact statement….The changes strengthen the regulatory language to encourage the preparation of concise EISs targeted only at studying, avoiding or reducing potentially significant impacts identified through the determination of significance and the scoping process…."

[1] An excerpt from the February 8, 2017 State Register describing DEC's proposed rule in more detail is attached for Agency Board information.

"Overall, scoping provides a large benefit to the EIS process. A consensus has emerged that EISs too often become defensive with inordinate stress on discussion of impacts that are trivial or not significant —making it more difficult to focus on those impacts that are truly significant. An EIS should focus on the central issues, but unfortunately, EISs sometimes contain too much minutiae that unreasonably prolongs the process."

"For more EISs to be consistently focused on significant impacts, scoping must be made mandatory. Scoping is a critical step in identifying issues that must be discussed in the EIS and eliminating less significant issues from further discussion…."

How DEC's proposed SEQR rule changes will affect APA

- DEC's proposed changes to its SEQR Type 1 and Type 2 lists will not directly affect APA's review of land use and development projects for two reasons: (1) Almost all projects that APA reviews are already not subject to the potential requirement of an EIS under SEQR based on an exclusion in the law; and (2) The "undue adverse impact" standard required by the APA Act for the approval of projects places a SEQR-like burden upon APA to avoid or minimize environmental impacts. The proposed changes to DEC's SEQR rules would potentially affect SEQR review by State agencies and local governments conducting, funding or approving activities in the Park.

- Mandatory scoping under DEC's proposed rules will directly affect APA's process for conducting SEQR review whenever an EIS is being prepared and APA is the lead or involved agency for SEQR purposes. Scoping will be required, for example, for certain State land classification processes. DEC's experience with the benefits of the scoping process to SEQR environmental review, as explained in the above excerpts from the GEIS for the proposed SEQR rules, is useful in understanding the value that scoping might provide for APA's environmental review processes both within and outside of SEQR.

APA's environmental review rule improvements

In the press release accompanying DEC's proposed SEQR changes last January, Commissioner Seggos announced that the changes, if adopted, "would make the first update to New York's State Environmental Quality Review (SEQR) regulations in more than two decades, preserving the integrity of the program while streamlining the environmental review process."

Proposed changes staff are working on to APA's SEQR rules, which have not been updated for nearly four decades, would further those same goals. Since receiving initial feedback from stakeholders and the APA Board on staff's first draft of revised APA SEQR rules, staff have met with an attorney who has extensive SEQR experience in

both the private and public sectors and with stakeholders to address the comments that were received. We anticipate making a final round of outreach prior to bringing a revised SEQR rule proposal back to the Board for consideration.

While DEC's SEQR proposals would not affect any of the proposed changes APA staff have developed, the focus of DEC's rulemaking on improving the SEQR review process has inspired staff to consider whether there are improvements that could be made to APA's project review rules that would streamline the process and add to the quality, consistency and predictability of APA's review of projects. For example, for larger projects, rules encouraging applicants to work more closely with APA staff prior to submitting their applications and allowing for the possibility of a public scoping process to identify potentially significant issues to be focused on during the review process both offer the potential for improving APA's review process.

With the encouragement of the Board, staff will broaden its informal outreach to discuss potential improvements to APA's project review rules as part of the conversation about proposed SEQR rule changes. If opportunities are identified, staff will include them as part of a broader proposal for environmental review improvements along with proposed revisions to APA's SEQR rules.

Attachment

Response: DEC annually monitors the Chautauqua Lake walleye fishery and the data suggest a 15" minimum size limit with a possession limit of 5 per day is warranted. Implementation of a slot limit would add additional protection for walleyes at a time when additional harvest of walleyes is warranted. A slot limit is not appropriate at this time.

Comment: I would suggest that size limit be reduced to 15" while keeping the daily limit at 3 fish.

Response: DEC annually monitors the Chautauqua Lake walleye fishery and the data suggest a 15" minimum size limit with a possession limit of 5 per day is warranted. Maintaining the daily possession limit of 3 per day is not warranted at this time because there currently is a high density of adult walleye in the lake and further increases are expected due to two large year classes of fish produced in 2014 and 2015.

Proposal: Remove the prohibition on the use or possession of smelt in Lake George and allow for harvest of smelt by angling.

Comment: Several commenters expressed concern about the proposal to allow limited harvest of smelt in Lake George by angling. The comments center around the concern that harvest of smelt could have population-level impacts on the smelt population and lead to a lack of forage fish for lake trout and landlocked salmon.

Response: The limited smelt harvest opportunity afforded by this proposal is not expected to significantly impact the smelt population. Some commenters expressed concern that dipping of smelt was part of this proposal. However, that is not the case. Current regulations do not allow the dipping of smelt in Lake George tributaries, and this proposal would not change that.

Comment: Fish swallow smelt, so trying to release a short or unwanted fish would be deadly.

Response: Fish do not swallow smelt more than any other species. Since the use of baitfish is already legal in Lake George, the only change this proposal would make is to add smelt to the already extensive list of baitfish that can be legally used on Lake George. Hooking mortality of trout and salmon in Lake George is not anticipated to increase as a result of this proposal.

Comment: A 25 fish limit is futile, and will serve no purpose to promote outdoor sports, or generate revenue for associated communities. For any reasonable person to entertain pursuing smelt on Lake George, the daily limit should be at least 75 fish.

Response: We anticipate that most smelt angling will be to obtain smelt for bait. However, some smelt will certainly be harvested for consumption as well. The 25 per day limit provides a reasonable quantity for consumption, yet affords a compromise with those who feel there should be no harvest of smelt on Lake George.

Proposal: Reduce the daily limit from 5 to 3 northern pike for St. Lawrence River and define boundary between Lake Ontario and the St. Lawrence River.

Comment: I disagree with the limit of northern pike being reduced to three a day. However, I would like to see the legal size raised to 24 inches. This in itself probably would reduce the number taken as well increase the breeding stock.

Response: While raising the minimum size limit on northern pike to 24 inches could also reduce overall harvest, it would also direct harvest toward larger, spawning age fish. Lowering the creel limit from 5 to 3 fish has a greater potential to reduce overall pike harvest.

Comment: Let's make the Pike catch and release.

Response: Many St. Lawrence River anglers desire to harvest all or a portion of their catch, and there is no biological information indicating a need to restrict all harvest of these species.

Proposal: Eliminate special trout regulation on Whey Pond (Franklin County).

Comment: Two commenters thought the special regulation should stay, and expressed concern that removal of the special regulation will jeopardize the pond's rainbow trout fishery and threaten the holdover survival of trout, especially given the pond's location within the popular Fish Creek/Rollins Pond campgrounds.

Response: The special regulation that is being removed was created to protect the Whey Pond brook trout population. However, because of poor performance due to introduced competing fish species, brook trout have not been stocked since 2013. The primary trout fishery in the Pond is brown and rainbow trout which are stocked annually. The special regulation is no longer needed.

Proposal: Eliminate the allowance for spearing bullheads and suckers in all Cayuga, Oswego and Wayne county tributaries to Lake Ontario.

Comment: "eliminating allowance for spearfishing in Cayuga and Wayne counties. Have been doing it my whole life. Wish you wouldn't"

Response: The proposal to eliminate spearing in Wayne County was dropped as this was inadvertently included in the proposed regulations. While the proposal to eliminate spearing in Wayne County tributaries has been dropped, we still believe the need to protect walleye and steelhead in the Cayuga County tributaries outweighs the benefits associated with any existing legal spearing that occurs in those streams.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Amendment to 6 NYCRR Part 617 (Which Implement the State Environmental Quality Review Act [Article 8 of the ECL])

I.D. No. ENV-06-17-00001-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Part 617 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 8-0113

Subject: Amendment to 6 NYCRR Part 617 (which implement the State Environmental Quality Review Act [article 8 of the ECL]).

Purpose: The purpose of the rule making is to streamline the SEQR process without sacrificing meaningful environmental review.

Public hearing(s) will be held at: 1:00 p.m., March 31, 2017 at Department of Environmental Conservation, 625 Broadway, Rm. 129, Albany, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule (Full text is posted at the following State website: http://www.dec.ny.gov/permits/83389): The 2017 proposed amendments to the State Environmental Quality Review Act (SEQR) regulations would improve and simplify SEQR without sacrificing meaningful environmental review of actions subject to SEQR. The amendments are the Department's first significant update to the SEQR regulations since 1995. They are among the steps that the Department has taken to modernize the SEQR process that includes the new environmental assessment forms along with the creation of workbooks and a spatial data platform on DEC's website (EAF Mapper). The Mapper enables users in performing environmental assessments to access the same geographic information relied on by DEC staff. The Department's proposed changes reduce the number of minor projects and routine governmental decisions that are subject to SEQR by adding them to the statewide list actions that are exempt from further SEQR review, which is known as the "Type II list of actions". Some examples of the new Type II actions include the following: Retrofitting of a structure or facility to incorporate green infrastructure practices; installation of five megawatts or less of solar energy arrays on sanitary landfills, water treatment facilities, or on an existing structure; subdivisions defined as minor under a municipality's adopted subdivision regulations, or subdivision of four or fewer lots, whichever is less, that involve ten acres or less; providing for sustainable development of already disturbed sites based on community size; acquisition and dedication of parkland; certain transfers of land for affordable housing; and construction and operation of an anaerobic digester, at a publically-owned wastewater treatment facility or a municipal solid waste landfill. The amendments would also modify certain thresholds in the Type I list of actions (actions deemed more likely to require the preparation of an environmental impact statement (EIS) (see 6 NYCRR 617.4); make scoping of environmental impact statements (see 6 NYCRR 617.8) mandatory (scoping is now optional); and more precisely define and tighten the acceptance procedures for draft environmental impact statements. The Department is also proposing an amendment to section 617.10 of 6 NYCRR (generic environmental impact statements) that would clarify the ability of a lead agency to deny an action for which it has prepared a generic environmental impact statement. Finally, the Department is proposing rules to implement the statutory EIS on the web requirement (Chapter 641 of the Laws of 2005) along with a number of other changes to encourage the electronic filing of EISs (see Express Terms, 6 NYCRR section 617.12) and changes to 617.13 to add greater transparency to consulting costs when a lead agency engages private consulting firms and charges the costs back to project sponsors.

The full text of the amendments is posted on the Department's website at http://www.dec.ny.gov/permits/6061.html. The Department has also prepared (and posted on its website in the same location) a draft environmental impact statement (draft EIS) that, among other things, assesses the impact on the environment of the proposed changes. The draft EIS is combined with the regulatory impact statements required by the State Administrative Procedure Act.

Text of proposed rule and any required statements and analyses may be obtained from: James Eldred, Environmental Analyst, New York State Department of Environmental Conservation, 625 Broadway, Albany, New

York 12233-1750, Comments may be submitted by e-mail or by ordinary mail, (518) 402-9167, email: SEQRA617@dec.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: May 19, 2017.

Additional matter required by statute: The Department has classified the action as Unlisted. The Department has also prepared combined draft environmental impact statement, which is posted (together with all other required SAPA statements) at http://www.dec.ny.gov/permits/83389.html.

Regulatory Impact Statement

1. Statutory Authority

The Department's statutory authority to amend Part 617 is in Environmental Conservation Law (ECL) § 8-0113, which authorizes the Department, through the Commissioner, to adopt rules and regulations to implement the State Environmental Quality Review Act (SEQR).

2. Legislative Objectives

The purpose of the proposed amendments to Part 617 is to update and improve the efficiency of the SEQR process without sacrificing meaningful environmental review. The proposed changes build on regulatory changes from past SEQR rulemakings, namely the 1995 amendments (effective January 1, 1996) to the SEQR regulations (which supplemented the Type II list and established a more detailed scoping process for environmental impact statements, among other changes) and on the rulemaking that established the new electronic environmental assessment forms that became effective October 7, 2013.

3. Needs and Benefits

The last major amendments to the SEQR regulations occurred two decades ago. This rule making is intended to update the SEQR regulations with additional Type II actions, i.e., adding more actions to the list of actions not subject to further review under SEQR, and with other changes more fully described in the express terms and accompanying environmental impact statement. Many of the concepts and ideas underlying the proposed changes had their genesis in 2011 when the Department convened a series of round table meetings among stakeholders in the SEQR process on ways to streamline the SEQR process without sacrificing meaningful environmental review.

Beginning in 2011 and continuing through 2013, stakeholder meetings were held throughout the state with individuals representing governmental agencies, business, and environmental groups (see, draft generic environmental impact statement or draft GEIS, Appendix A, which has been published on the Department's website at http://www.dec.ny.gov/permits/83389.html). In those meetings, the Department asked stakeholders to react to a skeletal outline of proposed changes and to also add their ideas to the list that was prepared by the Department's staff. Stakeholders gave support to tightening the environmental impact statement process (requiring mandatory scoping and enacting more exact requirements on when a draft environmental impact statement can be rejected as inadequate). With some exception, stakeholders also gave support to a proposed list of additions to the Type II list of actions (i.e., actions that would not be subject to further review under SEQR). The express terms are, for the most part, the products of those meetings.

The Department is also proposing a provision to clarify that the discussion of mitigation measures in an environmental impact statement may include, where relevant, an analysis of a project's vulnerability to the effects of climate change such as sea level rise and flooding. (Energy use and greenhouse gas emissions are already among the topics addressed by SEQR. See ECL § 8-0109[2][h] as implemented by 6 NYCRR 617.9[b][5][iii][e] and Policy on Assessing Energy Use and Greenhouse Gas Emissions in Environmental Impact Statements, dated July 15, 2009.) As discussed in the accompanying draft GEIS associated with this rulemaking, this change implements a recommendation of the Governor's 2100 Commission and ensures that where appropriate mitigation measures will be considered in mitigating the impacts of a project.

Benefits

The accompanying draft environmental impact statement contains a specific discussion of objectives and benefits for each proposed change to the SEQR regulations.

4. Costs

a. To the regulated parties:

Because SEQR is a law that requires compliance by government agencies, any effect on the regulated public is indirect. Further, in most cases, the proposals, if adopted, would arguably reduce costs through the creation of additional Type II actions and further streamlining of the EIS process. This is the agency's overall best estimate; however, the economic impact of the amendments to SEQR is impossible to quantify.

Except for the small change to the Type I rule (which lowers the thresholds for when a residential subdivision would classified as a Type I action) and the proposed change to section 617.9 (regarding sea level rise and storm-impact analysis), the changes streamline the regulations, which reduces costs to regulated parties. For example, the additional Type II actions would no longer be subject to review under SEQR. Mandatory scoping will help insure that environmental issues are considered early on rather than at the end of the process after a project sponsor has already spent large sums of money on moving an application forward. On the other hand, reducing the thresholds for Type I actions and subdivisions may arguably raise costs for subdivision applicants, though there is no way to measure the effect since some of the subdivisions effected by the new proposed rule would be Type I on account of other thresholds and the Type I requirement for coordinated review results in more efficiency of review (which arguably has the effect of reducing costs). The proposed rules in section 617.9 related to sea level rise and flooding may arguably increase costs for some project sponsors of developments that are located in coastal and other flood prone areas where the project requires preparation of an environmental impact statement. The additional costs would be to assess, avoid or mitigate the impacts that may come about from sea level rise or flooding — which as recent storm events show would be a cost-saver in the life cycle of the project and to governmental responders should a major storm event impact the project.

b. To state and local governments:

State and local agencies may decrease their costs (as would project sponsors) where the action involves one of the proposed Type II actions (actions not subject to review under SEQR). State and local governments may incur additional costs on account of mandatory scoping. This cost is difficult to measure, however, since scoping can decrease costs later in the process by insuring that environmental issues are articulated at an early stage in project review. The concept of scoping is not new as it was first introduced into the SEQR regulations in 1987 and then detailed in the 1995 amendments to the SEQR regulations (effective January 1, 1996). Some manner of scoping currently occurs for all draft EISs. The regulation now specifies how scoping should be done when the scoping option is chosen. Agency staff time spent participating in scoping should be more than offset by a reduction in staff time currently spent determining adequacy of a submitted draft EIS and requesting more information from applicants. Scoping also makes the process more predictable for applicants. Agencies have the authority to assess a fee for preparation or review of a draft or final EIS. This fee includes the cost of scoping. The Department, therefore, believes that, as a whole, state and local governments will see a reduction in costs associated with implementation of SEQR due to the reduction in the number of projects that will be subject to SEQR and the changes that encourage timely and more efficient reviews of actions.

Costs to the Department mainly involve staff time and resources to promulgate these regulations and then to conduct training on them. The Department already conducts scoping on most EISs where it is lead agency. As with most regulatory amendments there will be some cost in retraining people in the SEQR process as a result of this rulemaking. The cost here is short term and minimal. The Department has maintained a training and assistance program for those interested in receiving training and those who have specific questions relating to implementation of the law. The Department also cooperates with the Department of State and statewide organizations such as the Association of Towns, the Conference of Mayors and the New York Planning Federation in the conduct of training. This amendment would require that some additional staff time be devoted to training but it would be a relatively small change from currently existing efforts.

5. Local Government Mandates

There are no additional programs, services, duties or responsibilities imposed by the rule upon any county, city, town, village, school district, fire district or other special district except to require mandatory scoping of all environmental impact statements (where it is now optional). Statistically, there are very few environmental impact statements compared to actions that receive a negative declaration. The proposed regulations otherwise reduce mandates by adding to the number of Type II actions (which are not subject to further review under SEQR). The expansion of the Type II provision for area variances would most likely reduce the regulatory workload of zoning boards since area variances (which are within the jurisdiction of zoning boards of appeals) would only be subject to SEQR if a project required other approvals or permits that were subject to SEQR (e.g., site plan review, legislative zoning changes, use variances and special use permits). The requirement to look at sea level rise and flooding in a proper case is, at best, a minor mandate compared to the consequences of not doing so.

6. Paperwork

With the addition of items to the list of Type II actions there will be a reduction in the need for applicants and lead agencies to complete environmental review forms. (It should be noted, however, that in 2013 the forms became electronic with links to GIS and are now quicker and easier to complete than before). The amendments may, however, result in lead agencies having to prepare more scoping documents because scoping would be mandatory under the proposed new rules. Nonetheless, scoping is only applicable where an environmental impact statement is required

and only in a small percentage of actions is an environmental impact statement required. Scoping is, however, a long term time saver in that it allows for early identification of issues. There are no new or additional recordkeeping requirements of a regulated party. An additional requirement is imposed for internet posting of draft scopes.

7. Duplication

There is no duplication of other state or federal requirements. With some of the Type II additions, the regulations are intended to reduce duplication of SEQR review requirements with those carried out under State land use enabling laws (e.g., the sustainable development Type II actions in section 617.5[c]).

8. Alternatives

A list and discussion of the regulatory alternatives is contained in the draft GEIS.

9. Federal Standards

There are no applicable Federal standards inasmuch as SEQR is not a Federal delegated program.

10. Compliance Schedule

The time necessary to comply with these regulatory amendments is not substantial. Some training time may be necessary for those unfamiliar with SEQR but for those familiar with the current regulations the amendments should be easily understood and implemented. Any particular questions will be answered by the Department in its assistance role to state and local agencies and to the regulated public. The Department does anticipate conducting general training on these amendments for those who may want to participate, which would include in person and the preparation of web-based training materials. Compliance is technically required on the effective date of the regulation. The Department proposes that the amendments should take effect three months from the date their adoption is noticed in the New York State Register. This delay in implementation would allow for explanatory materials to be produced and training to occur before the effective date of the new rules. The express terms provide for an effective date of October 23, 2017, which was added as a placeholder since it is difficult to precisely determine when the proposed rules would be adopted (assuming they are adopted). The Department could change this date in the notice of adoption so the amendments become effective three months from the date of their adoption. In addition to physical outreach, the Department would utilize its electronic and web-based resources to train other agencies, local governments, and the public on the new regulations.

Regulatory Flexibility Analysis

1. Effect of Rule

Presently, any proposal, whether made by a business or local government, that involves a discretionary decision by a government agency and that may affect the environment, is subject to an assessment under the State Environmental Quality Review Act (SEQR) — to determine whether it may have a significant impact on the environment, and, if so, the lead agency must prepare an environmental impact statement. An exception lies where that action or project has been categorically determined not to be subject to environmental review (6 NYCRR 617.5[c]). The rulemaking effects all local governments (as they are required to comply with SEQR when approving or undertaking an action), and many small businesses, to the extent they may seek approvals or governmental funding for actions that may affect the environment. The actual effect on small businesses and local governments is very contextual depending on the action that is under consideration. Therefore, the proposed rules potentially effects all local governments and some small businesses but mostly in a way that is beneficial to them.

2. Compliance Requirements

The Department expects that the proposed rules, overall or state-wide, to reduce the cost of complying with SEQR because of the addition of a number of Type II actions (actions that do not require the preparation of an environmental impact statement) and proposed changes to the environmental impact statement process that would streamline the regulatory decision making process that is subject to SEQR. While a small number of large scale subdivisions may change classifications (due to changes proposed to the Type I list of actions contained in 6 NYCRR 617.4), from Unlisted to Type I, that change is procedural. Applicants for large scale subdivisions elevated to the Type I list would be required to complete the full EAF instead of the short EAF and the review of such subdivisions would require coordinated review. Type I actions are also deemed more likely to require the preparation of an EIS. However, only about 200 EISs are prepared on a yearly basis for tens of thousands of actions that are presumably the subject of a negative declaration. The imposition of mandatory scoping for EISs will mean more early work in the EIS process but statewide relatively few EISs are prepared. Finally, language has been added to the list of topics that an EIS may cover to insure that consideration is given tofor the vulnerability of development projects to flooding and sea level rise on account of climate change. Particularly in coastal areas, this may require additional analysis by local governments when they serve as lead agencies, and by small businesses when they are project sponsors. It would be speculative to predict the number of times a project sponsor and lead agency must perform these analyses. Substantive assessment of these topics has long-term benefits, as the nation discovered following the recent spate of hurricanes that have devastated coastal areas, e.g., "Superstorm" Sandy. Planning for major storm events is common sense.

3. Professional Services

The Department expects that there would be little change, if any, in the professional services that a small business or local government would likely employ to comply with this rule. Currently, the professional services that may be needed to prepare SEQR documents include a wide range of technical expertise. Because of the proposed new Type II actions, there may be a decrease in professional services since those actions would no longer require further compliance with SEQR. However, such an effect is difficult to measure.

4. Compliance Costs

The additions to the list of Type II actions may result in the elimination of time and expense for local governments and small business project sponsors.

The proposed changes would also bring greater efficiency to the environmental impact statement process by mandating scoping, creating greater linkages between the determination of significance and the scope of the EIS. The new requirements serve to encourage lead agencies to build on their prior analyses. The proposed regulations would also tighten the rules on whether the lead agency can reject a draft EIS as inadequate. While relatively few actions subject to SEQR (usually larger scale ones) require the preparation of EISs, the business community may realize some benefit in compliance costs from the proposed new procedures that would bring greater certainty to the EIS process. Compliance costs will otherwise remain the same except as discussed above with respect to whether additional professional services may be needed in some cases to timely complete final environmental impact statements.

5. Economic and Technological Feasibility

There are no economic or technological feasibility issues.

6. Minimizing Adverse Impact

There are no adverse economic or regulatory impacts expected from adoption of these rules.

7. Small Business and Local Government Participation

In preparing the proposed regulatory changes, the Department held numerous stakeholder meetings (that were co-sponsored by the Empire State Development Corporation) where individuals representing business and local governments were asked to identify changes that could be made the regulations. Overall, these meetings were very well attended and the exchanges of ideas and proposals was extensive and exhaustive. The list of individuals is attached as Appendix A to the draft environmental impact statement. The Department also issued a draft scope to this draft generic environmental impact statement, which was noticed in the Environmental Notice Bulletin. Through that media, persons from all parts of the state, including businesses and local government officials, were asked to comment on the proposed changes described in the scooping statement.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas

The regulations are statewide and thus the rules would apply to all rural areas.

2. Reporting, recordkeeping and other compliance requirements

There is no change from the existing rules except that a relatively small number of additional larger-scale subdivisions that would not otherwise be classified as Type I actions would now be classified at Type I and be subject to the full environmental assessment form rather than the short form and lead agencies will be required to conduct scoping in instances where environmental impact statements will be completed.

3. Costs

The Department does not expect any additional costs to comply with the new rules except as described in the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

4. Minimizing adverse impact

The proposed rules would not have an adverse impact on rural areas since they have the overall effect of decreasing the regulatory burden and making the SEQR process more efficient. Rural boards are likely to welcome some of the newly proposed Type II actions.

6. Rural area participation

The Department held stakeholder meetings throughout the state. A roster of individuals who attended the meetings is contained in attachment A to the draft generic environmental impact statement accompanying the proposed rules. As indicated by the roster, meetings were held in upstate locations including Albany and Buffalo. The roster of persons attending the round table discussions included quite a few persons located in rural areas of the State or who regularly work with rural communities. The Department also issued a draft scope to this draft generic environmental impact statement, which was noticed in the Environmental Notice Bulletin. Through that media, the Department solicited comments from all parts of the state including rural areas.

Job Impact Statement

The proposed amendments to the State Environmental Quality Review Act (SEQR) regulations at 6 NYCRR Part 617 should have no impact on existing or future jobs and employment opportunities as these are procedural revisions to existing rules. The proposal to add categories of Type II actions would constitute a reduction in regulatory burden. The Type I changes are minor and will not affect development or employment. The changes to the environmental impact statement process can be expected to bring greater efficiency to the EIS process.

A Job Impact Statement is not submitted with this rulemaking proposal because the proposal will not have a "substantial adverse impact on jobs or employment opportunities," which is defined in the State Administrative Procedure Act Section 201-a to mean "a decrease of more than one hundred full-time annual jobs and employment opportunities, including opportunities for self-employment, in the state, or the equivalent in part-time or seasonal employment, which would be otherwise available to the residents of the state in the two-year period commencing on the date the rule takes effect." The proposed changes to Part 617, which again are generally procedural in nature, are not expected to have any such effect and most likely will not affect or impact jobs or employment opportunities.

Department of Financial Services

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure

I.D. No. DFS-06-17-00014-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Addition of sections 52.1(p), 52.2(y), (z), (aa) and 52.16(o) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 3201, 3217, 3221, 4235, 4237 and 4303

Subject: Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure.

Purpose: To ensure that medically necessary abortion coverage is maintained for all insureds.

Text of proposed rule: Subdivision 52.1(p) is added as follows:

(p)(1) Subject to certain limited exceptions, Insurance Law section 3217 and regulations promulgated thereunder (section 52.16(c) of this Part) have long prohibited health insurance policies from limiting or excluding coverage based on type of illness, accident, treatment or medical condition. None of the exceptions apply to medically necessary abortions. As a result, insurance policies that provide hospital, surgical, or medical expense coverage are required to include coverage for abortions that are medically necessary.

(2) Section 52.16(o) of this Part makes explicit that group and blanket insurance policies that provide hospital, surgical, or medical expense coverage delivered or issued for delivery in this State shall not exclude coverage for medically necessary abortions. Section 52.16(o) of this Part also provides for an optional, limited exemption for religious employers and qualified religious organization employers as provided in that section while ensuring that coverage is maintained for any insured seeking a medically necessary abortion.

Subdivisions 52.2(y), (z), and (aa) are added as follows:

(y) Religious employer shall have the meaning set forth in Insurance Law sections 3221(l)(16)(A)(1) and 4303(cc)(1)(A).

(z) Qualified religious organization employer means an organization that:

(1) opposes medically necessary abortions on account of a sincerely held religious belief; and

(2)(i) is organized and operates as a nonprofit entity and holds itself out as a religious organization; or

(ii) is organized and operates as a closely held for-profit entity, as defined in subdivision (aa) of this section, and the organization's highest governing body (such as its board of directors, board of trustees, or owners, if managed directly by its owners) has adopted a resolution or similar action, under the organization's applicable rules of governance and consistent with state law, establishing that it objects to covering medically necessary abortions on account of the owners' sincerely held religious beliefs.

(aa) Closely held for-profit entity means an entity that:

(1) is not a nonprofit entity;

(2) has no publicly traded ownership interests (for this purpose, a publicly traded ownership interest is any class of common equity securities required to be registered under section 12 of the Securities Exchange Act of 1934); and

(3) has more than 50 percent of the value of its ownership interest owned directly or indirectly by five or fewer individuals, or has an ownership structure that is substantially similar thereto, as of the date of the entity's certification described in section 52.16(o)(2) of this Part; provided, however, that:

(i) ownership interests owned by a corporation, partnership, estate, or trust are considered owned proportionately by such entity's shareholders, partners, or beneficiaries and ownership interests owned by a nonprofit entity are considered owned by a single owner;

(ii) an individual is considered to own the ownership interests owned, directly or indirectly, by or for the individual's family, provided that, for the purposes of this subdivision, "family" includes only brothers, sisters, a spouse, ancestors, and lineal descendants; and

(iii) if an individual holds an option to purchase ownership interests, then the individual is considered to be the owner of those ownership interests.

Subdivision 52.16(o) is added as follows:

(o)(1) No policy delivered or issued for delivery in this State that provides hospital, surgical, or medical expense coverage shall limit or exclude coverage for abortions that are medically necessary. Coverage for abortions that are medically necessary shall not be subject to copayments, or coinsurance, or annual deductibles, unless the policy is a high deductible health plan as defined in section 223(c)(2) of the Internal Revenue Code in which case coverage for medically necessary abortions may be subject to the plan's annual deductible.

(2) Notwithstanding any other provision of this Part, a group or blanket policy that provides hospital, surgical, or medical expense coverage delivered or issued for delivery in this State to a religious employer or qualified religious organization employer may exclude coverage for medically necessary abortions only if the insurer:

(i) obtains an annual certification from the group or blanket policyholder or contract holder that the policyholder or contract holder is a religious employer or qualified religious organization employer and that it has a religious objection to coverage for medically necessary abortions; and

(ii) issues a rider to each certificate holder (i.e., primary insured) at no premium to be charged to the certificate holder (i.e., primary insured), religious employer, or qualified religious organization employer for the rider, that provides coverage for medically necessary abortions subject to the same rules as would have been applied to the same category of treatment in the policy issued to the religious employer or qualified religious organization employer. The rider must clearly and conspicuously specify that the religious employer or qualified religious organization employer does not administer medically necessary abortion benefits, but that the insurer is issuing a rider for coverage of medically necessary abortions, and shall provide the insurer's contact information for questions.

Text of proposed rule and any required statements and analyses may be obtained from: Nathaniel Dorfman, NYS Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 473-4824, email: Nathaniel.Dorfman@dfs.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority: Financial Services Law ("FSL") sections 202 and 302 and Insurance Law ("IL") sections 301, 3201, 3217, 3221, 4235, 4237, and 4303.

FSL section 202 establishes the office of the Superintendent of Financial Services ("Superintendent"). FSL section 302 and IL section 301, in pertinent part, authorize the Superintendent to prescribe regulations interpreting the IL and to effectuate any power granted to the Superintendent in the IL, FSL, or any other law.

IL section 3201 subjects policy forms to the Superintendent's approval.

IL section 3217 authorizes the Superintendent to issue regulations to establish minimum standards, including standards for full and fair disclosure, for the form, content and sale of accident and health insurance policies and subscriber contracts of corporations organized under IL Article 32 and Article 43, and Public Health Law Article 44.

IL section 3221 prohibits a policy of group or blanket accident and health insurance, except as provided in IL section 3221(d), to be delivered or issued for delivery in New York unless it contains in substance the provisions set forth therein or provisions that are in the opinion of the Super-