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**INTRODUCING FEDERAL NATIONAL ENVIRONMENTAL POLICY ACT PRACTITIONERS TO
THE NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT**

This fact sheet is designed to familiarize Federal [National Environmental Policy Act](#) (NEPA) practitioners with the [New York State Environmental Quality Review Act](#) (SEQR). When a proposed NEPA action also requires compliance with SEQR, it is critical that these practitioners familiarize themselves with SEQR and understand how SEQR compares to and contrasts with NEPA.

Both statutes are designed to facilitate informed decision-making and environmental review. SEQR requires that state agencies study the environmental consequences of their actions, including permitting. It also requires them to take all feasible measures to avoid, minimize, and mitigate damage to the environment. This fact sheet compares CEQR and the resulting [SEQR procedures](#) with CEQ's regulations for implementing the procedural provisions of NEPA, [40 CFR Parts 1500-1508](#).

This fact sheet only provides basic information and is intended to serve as a springboard for discussion with the New York State Department of Environmental Conservation (Department) staff when proposed projects trigger both Federal and state environmental review requirements. Project proponents are strongly encouraged to contact the Department in the early stages of project planning so that Federal and state environmental review processes, if applicable, can be appropriately aligned.

It is important to note that SEQR expressly permits that a NEPA environmental impact statement (EIS) be used in lieu of an environmental impact statement prepared pursuant to [SEQR. 6 NYCRR 617.15](#). An agency does not have to prepare an additional EIS when a NEPA EIS is prepared so long as SEQR findings can be made using the NEPA EIS. *Id.* A finding of no significant impact (which, under SEQR, is called a negative declaration), however, does not automatically translate into a SEQR negative declaration. *Id.* NEPA FONSI's can help to inform the state review but are not dispositive on it.

Introduction

SEQR requires all New York State local and state agencies to determine whether the actions they directly undertake, fund, or approve may have a significant impact on the environment. Under SEQR, this not only includes actions requiring a discretionary decision (e.g., issuance of a permit, license, special use permit, site plan approval or other type of approval); it also includes actions that are funded or directly undertaken by an agency, or where an agency has adopted a resource management plan, rule, or policy that affects the environment.

The SEQR process is similar to the NEPA process. Agency actions may be categorically excluded if the proposed action will not significantly affect the environment. Under SEQR, categorically excluded actions are called Type II actions. 6 NYCRR 617.5. The State of New York also has an Environmental Assessment Form (EAF), which is used to inform the agency on



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whether it should issue a Negative Declaration, a Conditioned Negative Declaration, or a Positive Declaration (which is available on line with an interactive feature whereby spatial data from the Department's GIS can be imported to complete the forms). A Positive Declaration triggers the need for an Environmental Impact Statement (EIS). The EIS review is complete when involved agencies and the public have considered the final EIS and involved agencies have prepared their written SEQR findings statement indicating whether the action can be approved.

Key Points of Comparison

The table below compares NEPA terms and procedural requirements to SEQR terms and procedural requirements set forth in SEQR.

NEPA	SEQR
Categorical Exclusion (CE), 40 CFR 1508.4 , 40 CFR 1507.3	Type II actions, 6 NYCRR 617.2(aj) , 6 NYCRR 617.5
Environmental Assessment, 40 CFR 1508.9 , 40 CFR 1501.3	Environmental Assessment Form (EAF), 6 NYCRR 617.2(m) , 6 NYCRR 617.6(a)(2) and (3) .
Notice of Intent, 40 CFR 1508.22	Positive Declaration, 6 NYCRR 617.12(a)(2)(ii) and (iii)
Draft Environmental Impact Statement (DEIS), 40 CFR 1502 , 40 CFR 1508.11	Draft Environmental Impact Statement, 6 NYCRR 617.2(n) and 6 NYCRR 617.9 .
Final Environmental Impact Statement (FEIS), 40 CFR 1502 , 40 CFR 1508.11	Final Environmental Impact Statement, 6 NYCRR 617.2(n) and 6 NYCRR 617.9 .
Finding of No Significant Impact (FONSI), 40 CFR 1508.13	Negative Declaration, 6 NYCRR 617.2(y) and 6 NYCRR 617.7 .
Record of Decision, 40 CFR 1505.2	Findings Statement, 6 NYCRR 617.2(p) ; 6 NYCRR 617.11

The bullets below provide a general comparison of processes:

- If an agency determines that an action is subject to SEQR, the applicant completes and files Part I of an EAF; Type I actions mandate completion of a full EAF, while Unlisted actions typically only require a short EAF. [6 NYCRR 617.6\(b\)\(a\) \(2\) and \(3\)](#). If there are multiple involved agencies, a lead agency must be established for Type I actions and may be optionally established for Unlisted actions. The lead agency is responsible for completing Part 2 (impact assessment) and Part 3 (determination of significance).
- SEQR's EAF and NEPA's EA are both used to determine if an EIS is needed, but they are not identical. The EAFs require the applicant to provide specific information about environmental conditions and topics. [6 NYCRR 617.20](#). NEPA, however, grants the applicant and lead agency some discretion in the format by which they provide the necessary information.
- The lead agency must determine the significance of the action within 20 calendar days of its establishment as lead agency, or within 20 calendar days of its receipt of all



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information it may reasonably need to make the determination of significance, whichever occurs later, and must immediately prepare, file and publish the determination in accordance with section 617.12 of 6 NYCRR (the Documentation Preparation, Filing, Publication and Distribution requirements of SEQR).

- This Determination of Significance can take one of three forms: Negative Declaration, Conditional Negative Declaration, or Positive Declaration.
 - Issuance of a Negative Declaration ends the SEQR process.
 - A Conditional Negative Declaration (CND) is appropriate if the agency determines that an Unlisted action proposed by a private applicant may have a significant impact on the environment, but that any impacts may be eliminated or avoided through mitigation. [6 NYCRR 617.7\(d\)](#). After publishing a notice of the CND, the agency must accept public comments for 30 days. If no public comments identify significant environmental impacts not already considered in the EAF and determination of significance review, the CND becomes final and the SEQR process is complete. If, however, public comments detail substantive concerns, the lead agency will rescind the CND and proceed with a Positive Declaration. CNDs are rarely used.
 - A Positive Declaration describes the project, justifies the agency's determination that the project may have a significant environmental impact, and begins the scoping and EIS process. [6 NYCRR 617.12\(a\)\(2\)\(ii\)](#). A positive declaration can result if the lead agency identifies that one or more potentially significant impacts may occur. In this regard, New York courts have said that the threshold for determining significance is low.

SEQR's use of a Negative Declarations is similar to NEPA's issuance of Finding of No Significant Impact (FONSI). Both state that a proposed project is not likely to have significant environmental impacts. The public review process for Negative Declarations and for FONSI, however, differs. If a Negative Declaration is issued for a Type I action, the lead agency must publish its determination and justification for its findings. [6 NYCRR 617.7](#) and [617.12](#). If issued for an Unlisted action, the lead agency is not required to publish its determination. Additionally, there is no situation in which a lead agency is required to accept public comment for a Negative Declaration.

- Similar to the relationship between Negative Declarations and FONSI, CNDs are similar to mitigated FONSI. A CND may be issued under SEQR if the lead agency determines that the adverse impacts of an Unlisted action proposed by a private applicant may be avoided through mitigation. [6 NYCRR 617.7\(d\)](#). All CNDs require a 30-day public review period, at the end of which the CND is either made final or the lead agency determines that an EIS must occur. One critical difference is that CNDs apply only to projects that involve an applicant, meaning a lead agency cannot issue a CND for a project where the lead is the sponsor or proponent of the project (i.e., the lead agency is also the project sponsor). Under NEPA, mitigated FONSI are issued for any action which the lead agency determines to have a significant impact on the environment that can be avoided by mitigation and thus does not require an EIS. See Council of Environmental Quality, "[Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact](#)"



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- ” (January 2011). As mentioned above, under SEQR, CNDs are rarely used.
- An EIS prepared for either SEQR or for NEPA must also undergo a public review process. SEQR mandates a minimum 30-day public comment period. [6 NYCRR 617.9\(a\)\(3\)](#). NEPA, however, requires a longer public review period of at least 45 days. [40 CFR 1506.10\(c\)](#).
- SEQR requires issuance of a Final EIS (FEIS) and a Notice of Completion. Ten days after issuing the FEIS and Notice of Completion, the lead agency and any other involved agencies may issue their written findings (6 NYCRR 617.11[a-b]) and act on its final decision to undertake, fund, approve or disapprove the action that has been the subject of the EIS. Findings, under SEQR, are equivalent to the record of decision in NEPA. The lead agency, under SEQR, must make these findings within 30 calendar days after the filing of the final EIS where the project sponsor is a private applicant. In all other cases, SEQR does not impose a specific maximum time constraint, but agencies generally publish their findings within the 30-day time limit required by SEQR. At this point, the SEQR process is complete, and the agencies have determined whether to approve the proposed project. It is also important to note that SEQR time frames, as a general rule, are directory and not mandatory meaning that the timeframes do not result in default contingencies or approvals.

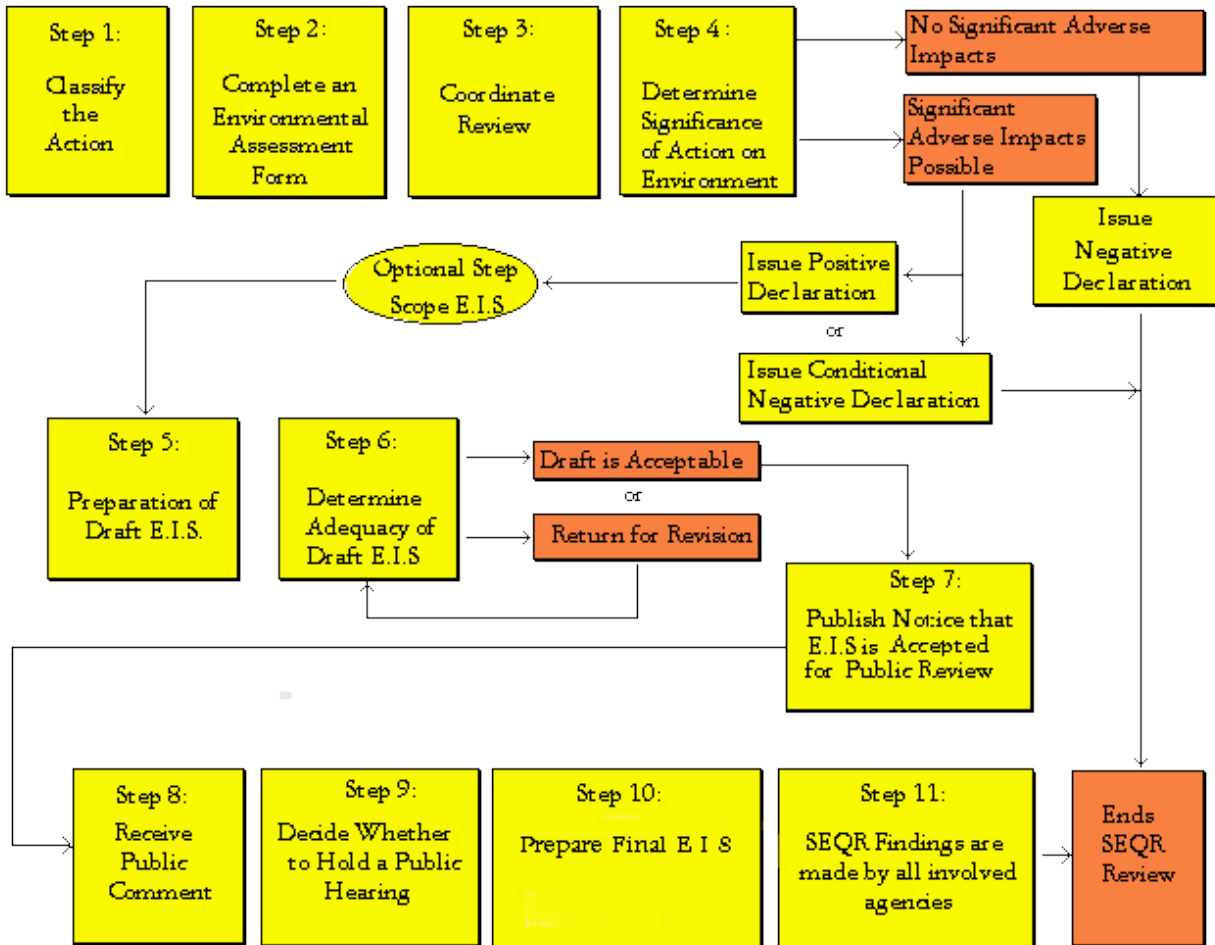
Contact Information and Resources

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New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-4500
depermitting@dec.ny.gov
- General Telephone: (518) 402-9167
- NYS DEC website: <http://www.dec.ny.gov/index.html>
- SEQR: <http://www.dec.ny.gov/permits/357.html>
- SEQR EAFs: <http://www.dec.ny.gov/regs/4490.html>
- FAQs on the use of the EAFs: <http://www.dec.ny.gov/permits/93240.html>
- SEQR Workbooks (used for completing EAFs): <http://www.dec.ny.gov/permits/90125.html>.
- SEQR Handbook (more general FAQ guide to SEQR):
<http://www.dec.ny.gov/permits/6188.html>



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Figure 1¹

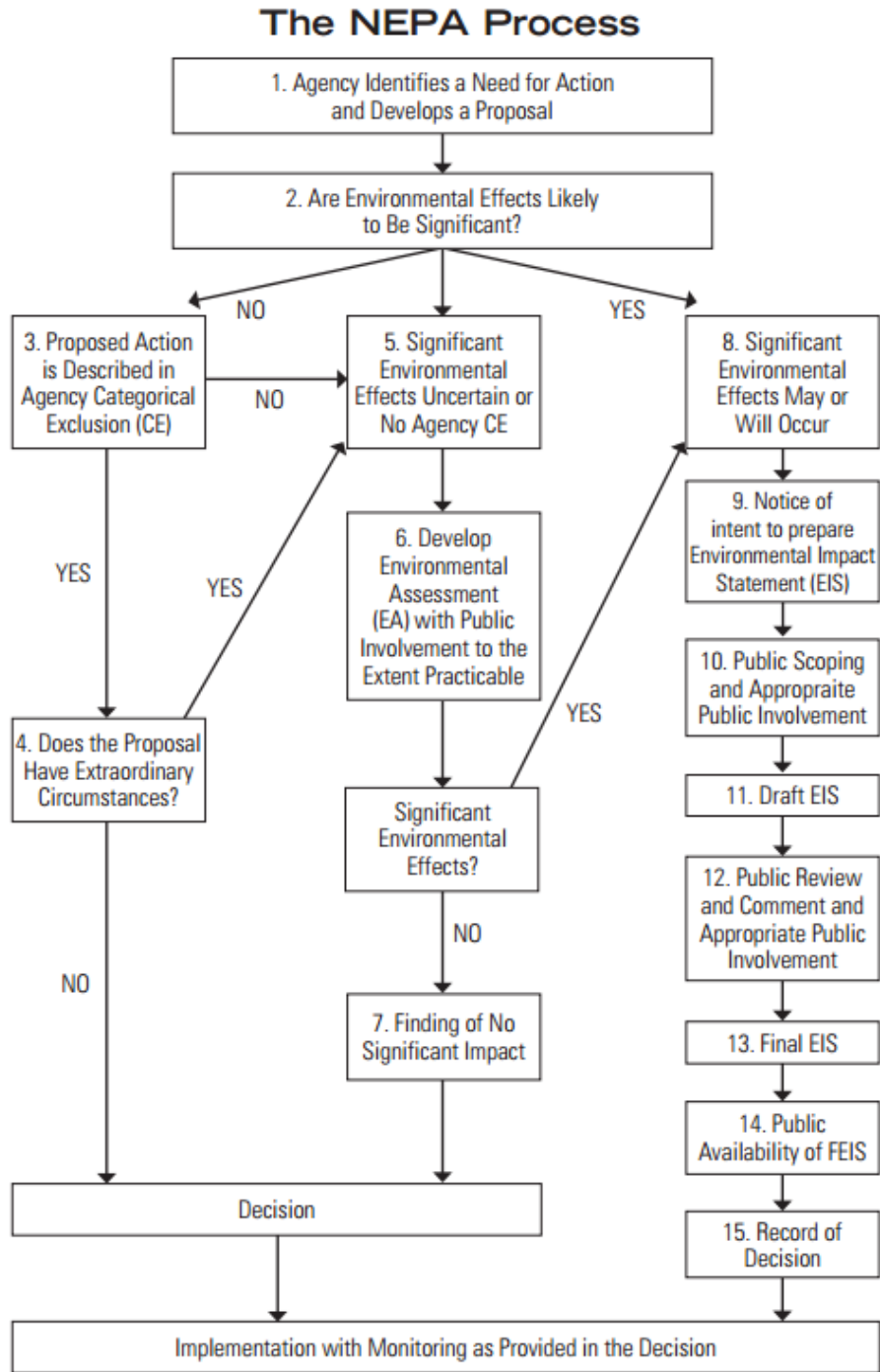


¹ <http://www.dec.ny.gov/permits/32521.html>: An interactive explanation of the New York State Environmental Quality Review Act



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Figure 2²



² A Citizens Guide to NEPA - Available at: https://ceq.doe.gov/publications/citizens_guide_to_nepa.html