Section 15.1. Purpose and authority.

(a) The purpose of this Part is to establish such additional procedures as are necessary for the implementation of the State environmental quality review act (SEQR) by the New York State Department of Transportation. In accordance with the authority contained in section 8-0113, subdivision 3 of ECL and 6 NYCRR 617.4, the procedures contained in this Part vary from those contained in 6 NYCRR Part 617. The purpose of this variance is to allow the department to establish a procedure for SEQR implementation which corresponds with, and is integrated into, procedures for compliance with the National Environmental Policy Act.

(b) Such coordination of procedures is directed by SEQR in section 8-0111 and is consistent with Council on Environmental Quality regulations implementing the National Environmental Policy Act which have an effective date of July 30, 1979 (40 CFR 1500 et seq.).

(c) The major differences between this Part and 6 NYCRR Part 617 are:

(1) lead agency determinations are made at an earlier time in the SEQR process; and

(2) all actions which are not type II actions are processed in the same manner (similar to type I under 6 NYCRR Part 617).

(d) These regulations are designed to be no less protective of the environment than 6 NYCRR Part 617.

Section 15.2. Definitions.

Unless the context otherwise requires, the following definitions shall be applicable to this Part:

(a) Action means:

(1) a project or physical activity which results in the creation, alteration or new use of a structure, facility or land; and which

(i) is directly undertaken by the department;

(ii) is funded by the department; or

(iii) requires the issuance of a new permit or the modification of an existing permit by the department;

(2) the policy-, regulation- or procedure-making of the department.

(b) Agency means any State agency (other than the department) or any local agency which is subject to the requirements of SEQR.

(c) Applicant means any person making an application or other request for the provision of funding by the department for an action, for the private sale of land by the department which facilitates the undertaking of a proposed action, or for the issuance of a permit by the department permitting the applicant to undertake an action.

(d) Coastal area means the State's coastal waters and the adjacent shorelands, as defined in article 42 of the Executive Law, the specific boundaries of which are shown on the coastal area map on file in the Office of the Secretary of State, as required by section 914(2) of the Executive Law.
(e) Commissioner means the Commissioner of Transportation of the State of New York.

(f) Critical environmental area means a specific geographic area designated by a State or local agency, having exceptional or unique characteristics that make the area environmentally important.

(g) Department means the Department of Transportation of the State of New York.

(h) Direct action means a project or physical activity which results in the creation, alteration or new use of a structure, facility or land which will, upon completion or operation, be under the jurisdiction of the department. Direct action also includes the policy-, regulation- and procedure-making of the department.

(i) DEIS means a draft environmental impact statement prepared for the purpose of complying with SEQR.

(j) Environment means the physical conditions which 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.

(k) Environmental assessment means a public document briefly providing sufficient information and analysis for determining whether the proposed action may or will not have a significant effect on the environment. The environmental assessment may be in the form prescribed in the appendices of 6 NYCRR Part 617, in a form promulgated by the department, in a form which complies with Federal regulations for the implementation of NEPA, or it may be any report prepared under the auspices of the department which provides sufficient information and analysis for the required determination.

(l) Excluded action means an action to which the requirements of this Part do not apply. Excluded actions are:

1. actions undertaken, funded or approved prior to the effective dates set forth in SEQR (see chapters 228 of the Laws of 1976, 252 of the Laws of 1977 and 460 of the Laws of 1978), except:
   (i) in the case of an action where it is still practicable either to modify the action in such a way as to mitigate potentially adverse environmental effects, or to choose a feasible and less environmentally damaging alternative, and the Commissioner of Environmental Conservation has required the preparation of an environmental impact statement; or
   (ii) in the case of an action which is proposed to be modified and the modification may result in a significant adverse effect on the environment, an environmental impact statement shall be prepared with respect to such modification;

2. actions requiring a certificate of environmental compatibility and public need under article VII or VIII of the Public Service Law and the consideration of, granting or denial of any such certificate;

3. actions subject to the jurisdiction of the Adirondack Park Agency pursuant to section 809 of the Executive Law, including actions of the Adirondack Park Agency thereunder, and actions subject to the jurisdiction of local governments pursuant to section 808 of the Executive Law and actions of such local governments pursuant thereto.

4. Exempt act means an enforcement or criminal proceeding (or the exercise of prosecutorial discretion in determining whether or not to institute such proceedings), maintenance or repair involving no substantial changes in existing structure or facility, acts which are immediately necessary on a limited emergency basis for the protection or preservation of life, health, property or natural resources, and all other types of acts listed in sections 15.12 and 15.13 of this Part. Exempt acts are not actions within the meaning of this Part.
(n) Federal DEIS means a draft environmental impact statement prepared for the purpose of complying with NEPA.

(o) Federal FEIS means a final environmental impact statement prepared for the purpose of complying with NEPA.

(p) FEIS means a final environmental impact statement prepared for the purpose of complying with SEQR.

(q) Funding or financial support means the provision by the department of money or services through contracts, grants, subsidies, loans or other forms of assistance to an applicant for the applicant's use in undertaking a proposed project or physical activity which will result in the creation, alteration or new use of a structure, facility or land which will, upon completion or operation, not be subject to the jurisdiction of the department. Funding itself is not an action within the meaning of this Part.

(r) Local agency means any local agency, board, authority, district, commission or governing body, including any city, county and other political subdivision of the State.

(s) Ministerial act means an act performed upon a given state of facts in a prescribed manner imposed by law without the exercise of any judgment or discretion as to the propriety of the action, although the law may require in some degree a construction of its language or intent, including all acts listed in section 15.13 of this Part. Ministerial acts are not actions within the meaning of this Part.

(t) NEPA means the National Environmental Policy Act.

(u) Permit means the grant by the department to an applicant of a lease, license, certificate, grant of permission or other entitlement for use or permission to undertake all or part of a proposed project or physical activity which will result in the creation, alteration or new use of a structure, facility or land which will, upon completion or operation, not be subject to the jurisdiction of the department. Permit-granting includes the private sale of land by the department which facilitates the undertaking of a proposed action. The issuance of a permit itself is not an action within the meaning of this Part.

(v) Record of decision means a public document stating the decision of the department and briefly stating the facts and conclusions relied upon in the FEIS or Federal FEIS supporting the department's decision, and indicating the social, economic and other factors and standards which formed the basis for the decision. The record of decision shall also contain specific findings or determinations required by SEQR.

(w) SEQR means article 8 of the Environmental Conservation Law, which is also known as the State environmental quality review act.

(x) Scoping means the process by which the department identifies the significant issues related to the proposed action which are to be addressed in the DEIS, including, where possible, the content and level of detail of the analysis, the range of alternatives, the mitigation measures needed to minimize or eliminate adverse impacts, and the identification of nonrelevant issues. Scoping is intended to promote the efficiency of the department's review of the DEIS, to provide an applicant with guidance on matters which must be considered, and to provide an opportunity for early involved agency and public awareness of the proposal.

(y) State agency means any State department, agency, board, public benefit corporation, public authority or commission.

(z) Type II action means any class or type of action which has been determined not to have a significant effect on the environment and which is not subject to this Part. Type II actions include only those actions or classes of actions included in section 15.14 of this Part and those actions or classes of actions included on the type II list of an applicant agency or lead agency, when such list...
Section 15.3. General rules.

(a) All direct actions, funding and permit-issuing of the department shall be fully subject to this Part and the procedures contained in this Part shall be followed, except for:

(1) exempt acts;
(2) excluded actions;
(3) type II actions;
(4) actions which are a part of, and in compliance with, a program for which a determination of no significant effect, an FEIS or Federal FEIS has been prepared.

(b) An FEIS or Federal FEIS is required for all actions, where such action may have a significant effect on the environment and where such direct action, or funding or permitting of such action by the department, is subject to this Part pursuant to subdivision (a) of this section.

(c) With respect to any action for which an FEIS is required or which is the subject of a Federal FEIS, the department shall not:

(1) commit itself to directly undertake the action;
(2) enter into any binding agreement or contract to provide funding for the action; or
(3) grant or commit itself to grant a permit for the action, until the department has prepared the record of decision as is required by section 15.9 of this Part.

(d) Where funding or permitting by the department is subject to this Part, the department shall not enter into any binding agreement or contract to provide funding, nor grant or commit itself to grant such permit, whether or not the action is the subject of an FEIS or Federal FEIS, until all requisite fees and costs have been paid.

(e) With respect to capital projects, many of the parts of such projects, if independently carried out, would be considered actions. The entire set of activities constituting the project will be considered the action for the purposes of this Part. If an environmental impact statement is determined to be necessary for such project, the DEIS and FEIS will cover the entire set of activities constituting the project.

Section 15.4. Initial determinations.

(a) The department shall determine whether its participation in a proposed project or physical activity constitutes a ministerial or exempt act. In such case, the participation of the department in such project or physical activity is not an action subject to this Part.

(b) The department shall determine whether its participation in the project or physical activity constitutes a direct action, funding or permit-granting. The policy-, regulation- and procedure-making of the department shall always constitute a direct action.

(c) If the proposed action is a direct action, the department shall determine whether or not the action is one which is a type II action, as listed in section 15.14 of this Part, and whether or not the action is one which is excluded. Should the proposed action be either type II or excluded, the department shall have no further obligation with respect to this Part for such action. Should such direct action not be type II or excluded, the procedures of section 15.6 of this Part shall apply.
action of the applicant is either type II or excluded, or has been determined by the lead agency to be an action which will not have a significant effect on the environment, the department may fund such action or grant such permit, as the case may be, and shall have no further obligation with respect to this Part. In the case of an action in a coastal area, the provisions of 19 NYCRR Part 600 may also apply and will, if applicable, be complied with by the department.

(b) Where the department is notified by the lead agency that the action is a major Federal action significantly affecting the quality of the human environment subject to the requirements of NEPA, the department shall follow those procedures necessary for its compliance with NEPA. Upon completion of the Federal FEIS, the department may fund such action or grant such permit, as the case may be, and shall have no further obligation with respect to this Part, provided that the department has:

(1) given consideration to the Federal FEIS; and

(2) prepared a record of decision in accordance with section 15.9 of this Part.

(c) Where the department is notified by the lead agency that it has determined that the proposed action of the applicant may have a significant effect on the environment and a Federal FEIS is not being prepared, the obligation of the department shall be to review and comment upon the DEIS. Upon the submission to the department by the lead agency of the FEIS for the proposed action of the applicant, the department may fund such action or grant such permit, as the case may be, provided that the department has:

(1) given consideration to the FEIS; and

(2) prepared a record of decision in accordance with section 15.9 of this Part.

Section 15.9. Record of decision.

(a) When the department decides to directly undertake an action or to fund or permit the action of an applicant, where such action has been the subject of an FEIS or Federal FEIS, the department shall prepare a record of decision. The record of decision shall contain the following:

(1) the decision of the department with respect to the proposed action;

(2) the following findings:

(i) the requirements of section 8-0109 of the Environmental Conservation Law have been met;

(ii) consistent with social, economic and other essential considerations, from among the reasonable alternatives thereto, the action to be directly undertaken, funded or permitted by the department is an alternative which minimizes or avoids adverse environmental effects to the maximum extent practicable, including the effects disclosed in the environmental impact statement;

(iii) consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided; and

(iv) if the action is in a coastal area, either that the action is consistent with applicable policies set forth in 19 NYCRR 600.5 or, if there is an approved local government waterfront revitalization program, that the action is consistent to the maximum extent practicable with that program; and

(3) a statement of the facts and conclusions relied upon in the FEIS or Federal FEIS supporting its decision, and indicating the social and economic and other factors and standards which formed the basis for the decision.
(b) In the case where a Federal FEIS has been prepared and the department has jointly, with a Federal agency responsible for NEPA compliance, prepared a record of decision for the purposes of complying with 40 CFR 1505.2 (effective July 30, 1979), such record of decision, if adopted by the department, may be in lieu of and satisfy the requirement of subdivision (a) of this section.

(c) A copy of the record of decision shall be maintained in the department's files and shall be sent to all involved agencies and, where appropriate, to the applicant.

Section 15.10. Notice and filing requirements.

The content, filing and publication of the notices required by this Part shall be as follows.

(a) Determination of no significant effect.

(1) The notice of the determination of no significant effect shall contain:

(i) a statement that it is a negative declaration for the purposes of article 8 of the Environmental Conservation Law;

(ii) a statement that the department (as lead agency) has determined that the proposed direct action of the department, or the action the department proposes to fund or permit, will not have a significant effect on the environment;

(iii) the name, address and telephone number of the department employee who can provide additional information with respect to the subject action;

(iv) a brief description of the nature, extent and location of the subject action; and

(v) a brief statement of the reasons supporting the determination.

(2) The notice of determination of no significant effect shall be filed as follows:

(i) with the main office of the department, which will maintain a central file of all such determinations;

(ii) if the action constitutes a capital project or physical activity, with the regional office of the department in which region the action is located;

(iii) with the Commissioner of Environmental Conservation at 50 Wolf Road, Albany, NY 12233;

(iv) if the action constitutes a capital project or physical activity, with the regional office of the Department of Environmental Conservation in which region the action is located;

(v) if the action constitutes a capital project or physical activity, with the chief executive officer of the appropriate political subdivision in which the action is located;

(vi) if the action involves an applicant, with the applicant; and

(vii) if other agencies are involved in the funding or permitting of the action, with such other agencies.

(b) Determination that a proposed action may have a significant effect.

(1) The notice of the determination that a proposed action may have a significant effect on the environment shall contain:
(i) a statement that it is a positive declaration for the purposes of article 8 of the Environmental Conservation Law;

(ii) a statement that the department (as lead agency) has determined that the proposed direct action of the department, or the action the department proposes to fund or permit, may have a significant effect on the environment;

(iii) a statement that a DEIS will be prepared;

(iv) the name, address and telephone number of the department employee who can provide additional information with respect to the subject action;

(v) a brief description of the nature, extent and location of the subject action; and

(vi) a brief description of the possible significant effects which have been identified.

(2) The notice of determination that a proposed action may have a significant effect on the environment shall be filed in the manner prescribed in subdivision (a) of this section.

(c) Notice of completion of DEIS.

(1) The notice of completion of the DEIS shall contain:

(i) a statement that it is a notice of completion of a DEIS;

(ii) a statement that the department is the lead agency;

(iii) the name, address and telephone number of the department employee who can provide additional information with respect to the subject action;

(iv) a brief description of the nature, extent and location of the subject action;

(v) a brief description of the possible significant effects which have been identified within the DEIS;

(vi) a statement indicating where and how copies of the DEIS may be obtained from the department;

(vii) a statement that comments on the DEIS are requested, and will be received and considered by the department for a period of not less than 30 days from the date of first filing of the notice, or not less than 10 days after the close of any hearing held to consider the DEIS, whichever shall occur last; and

(viii) the address to which comments should be sent.

(2) The notice of completion of DEIS shall be filed in the same manner prescribed in subdivision (a) of this section. A copy of the DEIS shall be filed with each notice. In addition, the DEIS shall be made available to persons requesting it.

(3) A copy of the notice of completion of DEIS and the DEIS shall be sent to the Secretary of State for any action in a coastal area.

(d) Notice of hearing.

(1) A notice of hearing shall contain the following:

(i) the time, place and purpose of the hearing; and

(ii) a summary of information contained in the notice of completion of the DEIS.
(2) A notice of hearing and a notice of completion of the DEIS may be combined into one document.

(3) The notice of hearing shall be filed in the same manner prescribed in subdivision (a) of this section.

(4) The notice of hearing shall be published, at least 14 calendar days in advance of the hearing, in a newspaper of general circulation in the area of potential impacts and effects of the proposed action.

(e) Notice of completion of FEIS.

(1) The notice of completion of the FEIS shall contain the following:

   (i) a statement that it is a notice of completion of an FEIS;

   (ii) a statement that the department is the lead agency;

   (iii) a brief description of the nature, extent and location of the subject action;

   (iv) a brief description of the possible significant effects of the subject action; and

   (v) a statement indicating where and how copies of the FEIS may be obtained from the department.

(2) The notice of the completion of FEIS shall be filed in the same manner as is prescribed in subdivision (a) of this section. A copy of the FEIS shall be filed with each notice and made available to persons requesting it.

(f) Subsequent notice for negative declarations. Any notice required by law or regulation to be filed or published by the department, which relates to a proposed action for which the department has filed a determination of no significant effect, shall contain a statement that such determination has been made.

Section 15.11. Criteria for determining whether an action may have a significant effect on the environment.

(a) An action may have a significant effect on the environment when the action can reasonably be expected to have one or more of the following effects:

   (1) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;

   (2) the removal or destruction of large quantities of vegetation or fauna; the substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse effects on a threatened or endangered species of animal or plant or the habitat of such a species; or other significant adverse effects to natural resources;

   (3) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;

   (4) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;