

Section 617.5 of NYCRR

§617.5 Type II actions

(a) Actions or classes of actions identified in subdivision (c) of this section are not subject to review under this Part. These actions have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under Environmental Conservation Law, article 8. The actions identified in subdivision (c) of this section apply to all agencies.

(b) Each agency may adopt its own list of Type II actions to supplement the actions in subdivision (c) of this section. No agency is bound by an action on another agency's Type II list. An agency that identifies an action as not requiring any determination or procedure under this Part is not an involved agency. Each of the actions on an agency Type II list must:

(1) in no case, have a significant adverse impact on the environment based on the criteria contained in subdivision 617.7(c) of this Part; and

(2) not be a Type I action as defined in section 617.4 of this Part.

(c) The following actions are not subject to review under this Part:

(1) maintenance or repair involving no substantial changes in an existing structure or facility;

(2) replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes, unless such action meets or exceeds any of the thresholds in section 617.4 of this Part;

(3) agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming;

(4) repaving of existing highways not involving the addition of new travel lanes;

(5) street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities;

(6) maintenance of existing landscaping or natural growth;

(7) construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities;

(8) routine activities of educational institutions, including expansion of existing facilities by less than 10,000 square feet of gross floor area and school closings, but not changes in use related to such closings;

(9) construction or expansion of a single-family, a two-family or a three-family residence on an approved lot including provision of necessary utility connections as provided in paragraph (11) and the installation, maintenance and/or upgrade of a drinking water well and a septic system;

(10) construction, expansion or placement of minor accessory/appurtenant residential structures, including garages, carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density;

(11) extension of utility distribution facilities, including gas, electric, telephone, cable, water and sewer connections to render service in approved subdivisions or in connection with any action on this list;

(12) granting of individual setback and lot line variances;

(13) granting of an area variance(s) for a single-family, two-family or three-family residence;

(14) public or private best forest management (silvicultural) practices on less than 10 acres of land, but not including waste disposal, land clearing not directly related to forest management, clear-cutting or the application of herbicides or pesticides;

(15) minor temporary uses of land having negligible or no permanent impact on the environment;

(16) installation of traffic control devices on existing streets, roads and highways;

(17) mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns;

(18) information collection including basic data collection and research, water quality and pollution studies, traffic counts, engineering studies, surveys, subsurface investigations and soils studies that do not commit the agency to undertake, fund or approve any Type I or Unlisted action;

(19) official acts of a ministerial nature involving no exercise of discretion, including building permits and historic preservation permits where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building or preservation code(s);

(20) routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;

(21) conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action;

(22) collective bargaining activities;

(23) investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt;

(24) inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession;

(25) purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, or other hazardous materials;

(26) license, lease and permit renewals, or transfers of ownership thereof, where there will be no material change in permit conditions or the scope of permitted activities;

(27) adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list;

(28) engaging in review of any part of an application to determine compliance with technical requirements, provided that no such determination entitles or permits the project sponsor to commence the action unless and until all requirements of this Part have been fulfilled;

(29) civil or criminal enforcement proceedings, whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order, or the exercise of prosecutorial discretion;

(30) adoption of a moratorium on land development or construction;

(31) interpreting an existing code, rule or regulation;

(32) designation of local landmarks or their inclusion within historic districts;

(33) emergency actions that are immediately necessary on a limited and temporary basis for the protection or preservation of life, health, property or natural resources, provided that such actions are directly related to the emergency and are performed to cause the least change or disturbance, practicable under the circumstances, to the environment. Any decision to fund, approve or directly undertake other activities after the emergency has expired is fully subject to the review procedures of this Part;

(34) actions undertaken, funded or approved prior to the effective dates set forth in SEQR (see chapters 228 of the Laws of 1976, 253 of the Laws of 1977 and 460 of the Laws of 1978), except 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 impacts, or to choose a feasible or less environmentally damaging alternative, the commissioner may, at the request of any person, or on his own motion, require the preparation of an environmental impact statement; or, in the case of an action where the responsible agency proposed a modification of the action and the modification may result in a significant adverse impact on the environment, an environmental impact statement must be prepared with respect to such modification;

(35) actions requiring a certificate of environmental compatibility and public need under articles VII, VIII or X of the Public Service Law and the consideration of, granting or denial of any such certificate;

(36) actions subject to the class A or class B regional project jurisdiction of the Adirondack Park Agency or a local government pursuant to section 807, 808 and 809 of the Executive Law, except class B regional projects subject to review by local government pursuant to section 807 of the Executive Law located within the Lake George Park as defined by subdivision one of section 43-0103 of the Environmental Conservation Law; and

(37) actions of the Legislature and the Governor of the State of New York or of any court, but not actions of local legislative bodies except those local legislative decisions such as rezoning where the local legislative body determines the action will not be entertained.