**B. Scoping A Draft EIS**

**In This Section You Will Learn:**

* what is scoping;
* purpose of scoping; and
* who participates in scoping.

**1. What is scoping?**

Scoping is a process that develops a written document ("scope") which outlines the topics and analyses of potential environmental impacts of an action that will be addressed in a draft environmental impact statement (DEIS, or draft EIS). The process for scoping is set out in 6 NYCRR [617.8](https://govt.westlaw.com/nycrr/Document/I4ec3ce65cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=%28sc.Default%29) (link leaves DEC website.)

**2. What is the purpose of scoping?**

The purpose of scoping is to narrow issues and ensure that the draft EIS will be a concise, accurate and complete document that is adequate for public review. The scoping process is intended to:

* ensure public participation in the EIS development process;
* allow open discussion of issues of public concern; and
* permit inclusion of relevant, substantive public issues in the final written scope.

The scoping process can also allow the lead agency and other involved agencies to reach agreement on relevant issues in order to minimize the inclusion of unnecessary issues. Finally, scoping should help the sponsor avoid the submission of an obviously deficient draft EIS.

**3. Is formal scoping required for every EIS?**

No. The regulations establish standards for scoping when it occurs, but they do not mandate formal scoping for all EISs.

**4. What happens if formal scoping is not conducted?**

In actual practice, some degree of scoping occurs in the development of every EIS. If a formal scoping process is not conducted, then scoping occurs by default with the project sponsor deciding what issues and information to include in the draft EIS. The lead agency must then assess adequacy of the draft EIS without having formally indicated to the sponsor what criteria it will use in making that assessment.

**5. What are the objectives of scoping?**

The scoping process has several objectives:

* Identify the significant environmental conditions and resources which may be affected by the project;
* Focus on the relevant environmental impacts to those environmental conditions and resources, thus providing the preparers with the specific issues to be addressed in the EIS;
* Eliminate irrelevant impacts or issues, and eliminate or de-emphasize non-significant impacts;
* Describe the extent and quality of information needed;
* List available sources of information;
* Specify study methods or models to be used to generate new information, including criteria or assumptions underlying any models, and define nature and presentation of the data to be generated by those studies and models;
* Define reasonable alternatives for avoiding specific impacts which must be included in the EIS, either as individual scenarios or a range of alternatives; and
* Specify possible measures for mitigating potential impacts which must be discussed in the EIS, to the extent that they can be identified at the time of scoping.

**6. What are the advantages of conducting formal scoping?**

Formal scoping is recommended because it provides several benefits, most importantly the "scope" itself. A scope is a written product in which the lead agency and project sponsor eliminate non-significant issues and focus the draft EIS on the most significant potential adverse environmental impacts.

A written scope of issues developed through a public scoping process benefits the lead agency and the sponsor by providing explicit guidance as to what criteria will be used to determine whether a submitted draft EIS is adequate. The written scope provides a means of ensuring that significant topics have not been missed and that the level of analysis in the EIS satisfies standards established during the scoping process.

Formal scoping can also give the lead agency and involved agencies greater control over the ultimate EIS product and ensure that the lead and involved agencies' environmental concerns are adequately addressed. Formal scoping can help reduce criticisms that an EIS is inadequate and reduce future challenges to EIS adequacy by involving the public in developing the specifications for the content of the EIS. An important component of those specifications can be agreements on specific methods, techniques, conditions or timing for new studies, which lets public comment on the DEIS focus on study results and implications for decisions.

Finally, when a scope enables the EIS to focus on just the significant adverse environmental impacts, there can be cost and time savings for all parties, including the public, because a smaller, more targeted document will need to be prepared and reviewed.

**7. What are the disadvantages of not conducting formal scoping?**

When there is no structured scoping process resulting in a written scope, a project sponsor prepares a draft EIS based on comments from the involved agencies and issues identified in the positive declaration but without further written submissions or public input. This limited input may be adequate for small, readily-defined actions with a relatively narrow range of clear-cut impacts or issues. In general, though, EIS's without scopes often attempt to discuss every topic conceivable, which takes focus away from significant and relevant issues. A lead agency also risks not discovering issues or resources of local importance, or overlooking sources of information and local or site history if it does not use public scoping. Finally, without public scoping, the lead agency may fail to meet all involved agency interests.

8. Is there a time period for scoping?

Yes, 60 days. Under 617.8, the scoping period starts when the project sponsor files a draft scope with the lead agency. The lead agency then circulates the draft scope, solicits public input, and provides a final written scope of issues to the applicant and all involved agencies within 60 calendar days of the filing of the draft scope. (See also sample timetable at the end of this section.)

**9. What are the alternatives if the lead agency cannot provide the final written scope within sixty days?**

The applicant and the lead agency may, by mutual agreement, agree to extend the 60-day time period to issue the final scope [[617.3(i)](https://govt.westlaw.com/nycrr/Document/I4ec3a761cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=%28sc.Default%29)] (link leaves DEC website.) For particularly complex or sensitive projects, such an extended scoping timetable is frequently necessary to ensure that the final scope appropriately addresses all issues and study specifications.

Alternatively, if the lead agency fails to provide a written scope within 60 days, the applicant has the right to submit a draft EIS based on the draft scope. In this event, the lead agency must still determine that the draft EIS is adequate before it opens the public review period.

**10. Who can start formal scoping?**

Scoping may be initiated by the applicant or required by the lead agency. Once formal scoping is started, however, the lead agency controls the scoping process.

**11. What is the lead agency's role in the scoping process?**

The lead agency directs the scoping process and is responsible for developing the final written scope. Initially, the lead agency must promptly provide a copy of the draft scope to all involved agencies. It must also make the draft scope available to any interested agencies and to members of the public who have expressed interest in writing.

The lead agency must then provide some opportunity for public participation in review of the draft scope. Some methods for this public input include circulating the draft scope, holding meetings, requesting written comments, or some other means of collecting public input.

Finally, the lead agency must prepare and distribute the final written scope. To prepare the final scope, the lead agency must compile all comments from its own review, from involved or interested agencies, and from the public, and use those comments plus the draft scope to develop the final written scope. It must distribute that final scope to the project sponsor, to all involved agencies, and to interested agencies and members of the public who commented in writing on the draft scope.

**12. Who else participates in scoping?**

The project sponsor, involved agencies and the public also have roles in a formal scoping process.

* The **project sponsor** starts the formal scoping process by submitting a draft scope to the lead agency, either at the lead agency's request or on its own initiative. The sponsor should also participate if the lead agency conducts a public meeting on the draft scope.
* **Involved agencies** should provide the lead agency with timely written comments identifying their relevant jurisdictions and any concerns, issues or questions which they feel should be addressed in the EIS. If an involved agency needs specific studies, models, or analyses included in the EIS, they should also identify those during review of the draft scope. They may also participate if public scoping meetings are held.
* **The public** must have an opportunity to comment on a draft scope, in writing or by some other means provided by the lead agency. Public comments on a draft scope must be received by the lead agency prior to its issuance of the final scope to ensure that they will be considered in developing that final scope.

**13. Can staff of a lead agency prepare a final scope without involving the public?**

No. If formal scoping occurs, Part 617 requires public participation in review of a draft scope.

**14. What can the public contribute to the scoping process?**

In many situations, individuals living adjacent to a project site or individuals familiar with it can identify site characteristics or potential adverse impacts not readily apparent to the project sponsor or lead agency. For example, long-time local residents may be familiar with seasonal patterns of intermittent drainage systems, or past uses of the site.

**15. Why should involved agencies participate in scoping?**

All involved agencies are required to make their own findings based upon the final EIS before issuing their individual decisions or approvals. An involved agency which fails to participate in scoping may find that the EIS record which is developed is not adequate to support its findings.

**16. How can involved agencies participate during scoping?**

Involved agencies should provide input to the lead agency on what they see as significant potential environmental impacts of a project. Involved agencies should provide timely written comments reflecting their agency's concerns, permit jurisdictions, and information needs. Where appropriate, involved agencies should identify any specific techniques or models which they believe must be used in studies or analysis for the EIS.

Additionally, involved agencies should identify reasonable alternatives to be addressed in the EIS, where those alternatives would avoid or reduce impacts within their jurisdictions. Finally, they may also participate in a scoping meeting if one is held.

**17. What if an involved agency fails to provide its comments on time?**

The lead agency cannot delay the completion of the written scope due to the failure of any involved agency to provide its written input. An involved agency which does not participate in scoping may, however, find itself at a disadvantage after the final EIS has been completed, when each involved agency is required to make its own findings based upon that EIS record. An involved agency which failed to participate in scoping may find that the EIS record lacks information to support some of the findings it must make.

**18. What sources should be used in developing the draft EIS scope?**

The project sponsor or EIS preparer should consider agency input, existing information and publicly-available sources in developing a draft scope for an EIS. Such information may include:

* The positive declaration itself, especially its identification of potentially significant adverse environmental impacts;
* Supporting information contained in the Environmental Assessment Form (EAF), any applications, and site maps and plans;
* Any previous EIS's which considered:
  + the project site,
  + the surrounding area,
  + the same type of project, affecting comparable resources, or
  + other projects generating similar impacts.
* Any local or regional plans that indicate the community's intentions for the project site and the surrounding area, such as a comprehensive plan or local waterfront revitalization plan;
* Any state or federal plans for the area or its resources, such as water resource management plans, unit management plans, the New York State Open Space Plan, or a federal endangered species recovery plan;
* Natural and/or cultural resource inventories or maps that identify the important and sensitive resources affected by the proposed action;
* Any area-wide traffic or other similar studies;
* Existing relevant scientific literature; and
* Formal and available guidance or thresholds which the project sponsor will use as references in evaluating significance of impacts, particularly where the lead agency has no specific regulatory criteria.

The use of existing comprehensive plans, prior EIS's and natural resource inventories expedites scoping and reduces the need to develop extensive new data for the current EIS. Local agencies should consider preparing these documents to aid in their environmental decision-making.

**19. What must a written scope of issues address?**

Basic standards for the content of the final written scope are set out in 617.8(f). Whenever possible, the final scope should prescribe the form and extent of analysis for identified impacts and issues. Final scope requirements include the following:

* Provide a brief description of the proposed action, including location, size, timing and duration, and any individual project characteristics which cause or result in identified potential significant adverse environmental impacts.  
    
  **For example**, a component of a project description which would set up a later impact description could be as simple as, "During construction, truck traffic entering and leaving the public highway at the project site will increase from current levels."
* Describe all potentially significant adverse environmental impacts identified in the positive declaration and during agency and public review of the draft scope. Identify specific aspects of impacts, not just general topic areas, including what elements of the environmental setting may be impacted.  
    
  **Following the example above**, "Heavy truck traffic during construction could track large quantities of mud onto the public highway."  
    
  **Or** if "groundwater" is an issue, identify whether quantity, quality or both are relevant, and what specific attributes of each or both need to be discussed.
* Define the extent and quality of information needed to adequately address identified impacts:  
  For each impact:
  + cite available scientific literature that is pertinent to the issues;
  + identify other existing and relevant data which should be used; and
  + specify any new information which must be developed.

**For example**, will existing data from nearby wells be sufficient for groundwater quality analysis, or will new samples be needed?

* Identify methods to be used to assess the project's impacts. Define any thresholds in addition to regulatory standards to be used in evaluating significance of studied impacts. Where existing data will be relied on, cite the sources and summarize the findings. Where new information must be developed, applicant should include study plans with details like descriptions of field work techniques, locations of control and sampling points, methods for analysis of data, and any models to be used.  
    
  **Examples include**
  + mathematical models proposed to predict air, traffic or water quality impacts;
  + wildlife population studies;
  + visual resource impact analysis techniques; or
  + noise or vibration analyses.

The lead agency should ensure that all proposed models and studies are appropriate for the issues and technically acceptable to staff experts. The lead agency should consider obtaining explicit concurrence of involved agencies and key affected parties for proposed studies and models.  
  
**For example**, in a case where views from a ridgetop trail were at issue, the lead agency, sponsor, and a regional hiking group agreed on vantage points and methods for a visual analysis.

* Provide an initial list of potential mitigation measures to be discussed in the EIS, to the extent that they can be identified at the time of scoping, plus an explicit requirement to include and address additional mitigation measures which may be identified during EIS studies and analyses.
* Include a list of reasonable alternatives for avoiding or reducing identified impacts to be specifically addressed in the EIS, (size, sites, alternative technologies, or others), including any relevant thresholds. The lead agency may prescribe some or all of the range of alternatives to be included, and should identify which impact(s) a specified alternative would eliminate or minimize.  
    
  **For example**, specify, "alternatives shall include one or more alternative footprints which avoid the wetland intrusion", rather than, "consider alternative footprints".

Additional alternatives to avoid or mitigate specific impacts may be developed in the course of EIS studies and analyses. The lead agency may also specify criteria or rationale to be used to determine whether additional alternatives which emerge during studies or agency and public review would help balance environmental and sponsor's concerns.  
**For example**:

* are the alternatives permitted under existing zoning?
* would the alternatives require the applicant to involve or rely on an otherwise-uninvolved third party?
* would the proposed alternative(s) change the target market, or eliminate the project's economic return or viability?

List information and data to be included in appendices rather than the body of the EIS as well as any information or analyses to be presented graphically. The lead agency should specify how summaries and conclusions from all appendices will be represented in the body of the EIS and may wish to require advance review and approval of any graphics (or samples thereof).

**For example**, if a traffic study will be a component of an EIS, the methods and detailed data could be placed in an appendix with summary maps and narrative conclusions included in the body of the EIS.

* Include an explicit list of any prominent issues raised during agency and public scoping review which will not be included in the EIS. For each, explain the lead agency's specific basis and reasoning for eliminating it, such as:
  + existing studies may show that some potential environmental impacts are not significant for the proposed project or site;
  + a potential impact may have been adequately addressed in a prior environmental review;
  + an identified issue may not be a relevant environmental impact; or
  + parties raising an issue failed to provide substantive information to support consideration of that issue.
* By including this reasoning in the EIS record early in the process, the lead agency can maintain and readily defend the resulting EIS's focus on only the significant, potential adverse environmental impacts.  
    
  **For example**, in a region where timber rattlesnake populations were known to exist, they were excluded as an issue on one project site based on previous detailed DEC surveys which had shown no use of that specific site by the snakes.

**20. Can issues be added after scoping has been completed?**

Yes, but only based on the standards at 617.8(g) and (h). Any agency or member of the public raising such issues must provide the lead agency and the sponsor with a written statement that:

* identifies the additional information;
* explains the need to include this information in the draft EIS due to its relevance or significance; and
* tells why the information was not identified during scoping but should still be included in the EIS. The project sponsor then has the discretion to incorporate any such issues into the draft EIS or to consider them as comments on the draft EIS.

**21. When is it appropriate to add issues to a scope after formal scoping has ended?**

There are valid circumstances in which issues may be added after scoping has been completed, for example:

* unforeseen issues may come to light that could not have been known when scoping was completed;
* issues may be overlooked or remain undiscovered until the field work and research for the draft EIS is conducted; or
* project modifications may raise additional issues.

**22. Must issues raised late be included in the draft EIS?**

There is a strong presumption that a final scope acts essentially as a "contract" between the lead agency and the sponsor, to give both certainty and reliance as to expectations for the actual EIS that is to be produced. Therefore, the regulations give the project sponsor discretion whether to include a late-raised issue in a draft EIS. Any late issues will still be relevant concerns for the lead agency when it evaluates the adequacy of the draft EIS. The lead agency should take care to identify and narrow issues early in the process by developing a thorough scoping process.

Although the project sponsor decides whether any late issues are significant enough to add to the draft EIS or if it will treat them as comments on the draft, the lead agency must still in all cases determine whether a draft EIS is adequate before opening public comment on that draft. If a lead agency believes that a late issue is so important enough that the draft EIS must address it to be deemed adequate, then the lead agency should advise the project sponsor of that conclusion.

**23. Why must the public be involved in scoping?**

The regulations require public involvement in scoping to reduce the likelihood that unaddressed issues will arise during public review of the draft EIS. Early public review and input can ultimately shorten the SEQR review process by surfacing potentially contentious issues early on, allowing the lead agency and project sponsor to address them in a timely manner.

Even if the lead agency later determines that some issues raised by the public do not constitute "potentially significant impacts" and does not include them in the final scope for the EIS, the record will show that they were raised as well as explain why they are not being considered further. Additionally, early public involvement can limit rumors and inaccurate stories regarding the proposed project which can be generated when project information is unknown or only partially available.

**24. How can a lead agency effectively include the public in scoping?**

There are two key aspects to effective public participation in scoping: timely, sufficient and accurate notice about the project and scoping to interested and potentially affected parties; and effective means for the public to provide timely comments to the lead agency. For the public to productively participate in scoping, they should receive sufficient notice to understand the proposed project, the scoping process, and the overall SEQR EIS and application review processes.

The second element of effective public participation is getting public comment # the lead agency. The lead agency may choose to accept only written comments on the draft scope; may call for a public scoping meeting; or may combine the two. Even when a meeting is held, requiring interested parties to provide their comments in writing helps create a clearer record for the lead agency to use in developing the final scope.

In all cases, the lead agency should make sure that commentors understand the specific purpose of the current round of comments, that is, to develop the scope for the draft EIS. The lead agency may want to explicitly state that scoping comments are not the appropriate forum to argue the merits of the project proposal. Similarly, while scoping comments are an appropriate forum to raise potential issues or suggest specific studies, protocols, and alternatives, scoping comments are also not an appropriate forum to advocate for or against any specific decision.

**25. How can the public be advised of scoping?**

Since there is no specific notice method for scoping prescribed in the regulations, each lead agency should carefully consider the nature of the proposed project and its surroundings, and then develop a scoping outreach and notice program specifically for that situation. Several possible methods that lead agencies could use include but are not limited to:

* Include a note that the lead agency intends to require formal scoping in the summary of the positive declaration published in the Environmental Notice Bulletin (ENB).
* Supplement the required filing and publication of the positive declaration by announcing availability of the draft scope and opportunity to comment on it in local media, by letters to interested entities, or even by electronic means.
* Look at using the media creatively to provide notice of the application and scoping process. Especially in smaller markets and more rural areas, DEC as lead agency has been able to receive news coverage of upcoming EIS scoping by issuing a press release. In larger markets, local circulation weeklies or paid advertisements (preferably not legal notices) in larger newspapers can provide similar coverage. Be sure any release includes specific instructions on how members of the public can obtain draft scopes and other project information; a deadline for comments; and the name, address and telephone number of a contact person for additional information.
* If a small group or a few individuals have already expressed interest in the project, offer to meet with them individually or mail them copies of the draft scope and invite them to comment. Be sure any mailings include deadlines for comments.
* Especially when a project is likely to be highly contentious, consider mailing individual notice to adjoining and nearby landowners as well as to involved and interested agencies. This notice can be sent even before the draft scope is received and should be used to advise potentially interested parties about how to participate as well as alerting them to the project or application. Landowner names and addresses can be determined using tax maps; obtaining names and addresses of non-landowner residents is more difficult and may have to be done in cooperation with local interests.  
    
  How to define "nearby" will vary depending on the size of the project and the density of surrounding human population. Some criteria which have actually been used include:
  + all residents or owners within the first ring of roads outside the project area;
  + all owners of record within 1/4 mile of the project site; or
  + all parties between the project site and the next major confluence downstream.
* Post signs at or around the proposed project site.
* It is advisable to provide background information on the overall New York State Environmental Quality Review (SEQR) process within the scoping notice. Particularly when a project requires approvals from more than one agency, include a summary of the standards for whatever underlying approvals the applicant is seeking and explain how all of those reviews and approvals relate to each other and to the SEQR process.

**26. How can the lead agency make the draft scope available to the public?**

The notice announcing formal scoping should also include information on how the public can obtain copies of the draft scope and related application materials as well as on how to provide comments on the proposed scope. The lead agency has great flexibility in how it makes the draft scope available to the public. **Examples include** but are not limited to:

* Provide individual copies of the draft scope to interested parties.
* Make copies of the draft scope available for review at its offices.
* If sponsor or lead agency have the necessary technical support, post the draft scope on a Web site during the review and comment period.
* If interest in a project occurs over a large area, or if the lead agency's files are some distance from the project site, set up auxiliary file repositories to make copies of the scope as well as essential project documents more readily accessible to the affected public. Facilities which have been used as such repositories include public libraries, local government offices, and offices of involved agencies. If this option is used, the lead agency should choose a location open after normal business hours to allow members of the public who work during the day access to the files during the evening.

**27. Is a public scoping meeting required?**

No, Part 617 does not require a public meeting for formal scoping. Because Part 617 does not require any specific method of public involvement during scoping, a lead agency may in its discretion use any method which advises the public of the scope's availability and offers an opportunity to comment. A scoping meeting may be part of the comment effort, alone or in combination with other outreach efforts. Public scoping meetings can be effective forums to educate potential commentors, including advising them of the value of submitting followup written comments. Additionally, a public meeting can give the lead agency some sense of the "hottest" issues and potentially most involved publics for a given project.

**28. Must a separate meeting, in addition to other required meetings, be scheduled just for scoping?**

No. If lead agency chooses to hold a meeting as part of its public scoping, the scoping meeting may be coordinated with other preliminary meetings on the project. Keep in mind that certain boards which may develop EIS scopes during their regular meetings may be obliged by their own rules or by the State Open Meetings Law to allow public attendance during the scoping process. Whether input from attendees must be taken orally during such meetings would be governed by those boards' own rules.

If allowed under the lead agency's open meeting rules, an informal early meeting including the project sponsor, key staff or members of the lead agency, and representatives of active involved agencies may be useful to the project sponsor in developing a draft scope.

**29. How can a lead agency make public scoping meetings more effective?**

Lead agencies are often wary of public scoping meetings due to the perception that these meetings are unproductive and often confrontational. The lead agency can help make public scoping meetings more effective by using some or all of the following techniques:

* Prepare thoroughly. Distribute the draft scope prior to the public scoping meeting, and make sure potential participants understand the purpose of the meeting beforehand. This will tend to focus the public review and reduce the number of redundant or irrelevant comments.
* Set rules of conduct. Since the lead agency is running the meeting, it is reasonable to establish certain ground rules for participation:
  + explain at the beginning of the meeting that the purpose of scoping is to identify the relevant issues that need to be discussed in the EIS, not to resolve any issues;
  + require that the project sponsor present a brief description of the project at the start of the meeting;
  + encourage submission of written comments, along with or in place of oral comments;
  + require that all potential speakers sign up; encourage large groups with a limited interest to designate a single spokesperson;
  + allow 5 or 10 minutes per speaker;
  + allow all speakers the opportunity for comment before allowing questions;
  + if any speakers want additional time, allow all others an initial opportunity and then go back for the additional comments;
  + use a stenographer or tape recorder to create a record of the meeting; and
  + if the meeting will be controversial, obtain the services of an impartial moderator.
* Don't make instant decisions. If a new topic is identified at a scoping meeting, resist the urge to incorporate it or dismiss it at the meeting. A topic which sounds good and is received with enthusiasm by the public may, after review, not be a valid topic for the EIS. Dismissing a proposed topic without a thorough assessment is equally dangerous.
* Follow through with a final scope that stands on its own. Because the lead agency must distribute the final scope to all involved agencies and all those individuals who participated at the meeting as well as to the project sponsor, the final scope should clearly contain all reasoning for included and excluded issues as well as specifying all thresholds and criteria to be used in evaluating those impacts which are to be included in the draft EIS.

**30. What can the lead agency do if a project sponsor submits an inadequate draft scope?**

The regulations do not allow the lead agency to reject a draft scope, so the lead agency should simply proceed with the scoping process and offer the draft scope for public comment as received. The lead agency can state in any notices and cover letters that the draft scope is, "as received", and that the lead agency anticipates making substantial changes before issuing its final scope. This approach may well require the lead agency to devote additional effort to developing or soliciting specifications for sections of the EIS (for example, criteria for a traffic study or designating sensitive receptors for a visual impacts analysis). In any event, the final scope is the lead agency's responsibility, so it must include all elements that the lead agency believes are necessary to thoroughly analyze all identified potential adverse environmental impacts of the proposed project.

Alternatively, if there is reasonably good communication otherwise with the project sponsor, lead agency staff may wish to informally advise the project sponsor of the weaknesses in the draft scope, explain that these could create confusion or added effort for all involved during the public review, and offer the sponsor an opportunity to resubmit a revised draft. For this approach to be feasible and effective, the project sponsor and lead agency would also need to develop a mutually-agreeable revised schedule for public comment and completion of the final scope. Should the sponsor choose to resubmit, the lead agency may wish to provide the project sponsor with informal comments or other direction in preparing a revised draft scope.

In deciding which course to take in handling an inadequate draft scope, the lead agency should evaluate all aspects of the project. In the case of a highly contentious proposal or sponsor where the lead agency believes that any resubmitted draft would not be a significant improvement over the original draft, proceeding straight to public comment and developing an explicit and prescriptive scope may be the lead agency's most effective choice.

**31. What can the lead agency do if a project sponsor refuses to prepare a draft scope?**

If a lead agency had decided to require scoping, failure by the sponsor to provide the scope is essentially refusal to prepare the draft EIS. Under 617.9(a)(1), the lead agency may terminate its review of the proposal or application if a sponsor refuses to provide a draft scope. To support this decision, the lead agency would need to explicitly find that the application is incomplete due to lack of the draft scope, then deny or disapprove the application "without prejudice", that is, leaving the sponsor an opportunity to reapply. Alternatively, a lead agency may be able to formally "suspend" its own processing of the entire application until the project sponsor files a draft scope. Exact procedures for lead agencies to follow to terminate or suspend a review would be governed by each agency or board's own rules of procedure, so a lead agency should consult its own counsel for direction if it chooses either of these options. The lead agency should explicitly advise all involved agencies as well as the project sponsor of any termination or suspension of SEQR review.

Outside the possibility of denial or suspension, there are no enforcement tools to compel a sponsor to submit a draft scope. A lead agency may be tempted to simply prepare its own draft scope, but the regulations clearly place responsibility for preparation of the draft scope on the project sponsor. In a case where the sponsor refuses to submit a scope but the lead agency wants the review to proceed, the lead agency could prepare (or contract for) the scope and charge the sponsor under 617.3(a).

**32. Can the project sponsor prepare the final written scope?**

There is nothing in the regulations to prevent a project sponsor from preparing and submitting a proposed final written scope. Indeed, because some sections of the final scope may be included as sections or appendices of the EIS, the sponsor may prefer to prepare the final scope in the format it intends to use for the EIS. This is comparable to a lead agency asking a project sponsor to draft some responses to comments on a DEIS.

As with responses for an FEIS, however, the lead agency is still responsible for the content as well as the issuance and distribution of the final written scope. Accordingly, the lead agency must make sure it will be able to review and, if necessary, modify the sponsor's proposed final scope. Remember that the quality of the final scope as issued will reflect on the lead agency.

**33. Must the final scope be approved by the involved agencies?**

No. The lead agency is solely responsible for preparing and issuing the final scope. It may, at its discretion, solicit comments from involved agencies on all or portions of a proposed final scope. This may be particularly appropriate where an involved agency's technical requirements are the basis for incorporating particular study methods or models.

**34. What does DEC consider a reasonable scoping timetable?**

The 60-day clock in Part 617 to go from draft to final scope can be tight, but good advance coordination with the project sponsor and involved agencies can help manage it. There is much room for agency discretion, but a reasonable sample timetable could be similar to the following:

* Day 1  
  Sponsor files draft scope with lead agency; AND  
  Lead agency
  + begins internal review of draft scope; d
  + distributes draft scope to involved agencies and interested parties; and
  + provides public notice of availability of scope (including announcing scoping meeting, if any).
* Days 2 - 19  
  Lead and involved agencies, interested parties and the public review draft scope.
* Day 20  
  (Optional) Lead agency conducts scoping meeting with project sponsor, involved agencies, interested parties, and the public.
* Day 30  
  Involved agencies', interested parties', and general public's written comments due to lead agency.
* Days 31 - 59  
  Lead agency prepares final scope (which may involve additional consultations with the project sponsor, involved agencies, or key interested parties).
* Day 60  
  Lead agency distributes final scope to project sponsor, involved agencies, and interested parties.

A key factor in a lead agency achieving a sixty-day turnaround with sufficient working time to prepare the final scope is early public notice of the availability of the draft scope. Other advance coordination steps can also help meet the 60-day turnaround, including:

* If a scoping meeting will be incorporated into some other regular meeting of the lead agency, and that other meeting has a longer mandatory advance notice than provided by this timetable, the lead agency can issue an announcement "anticipating" discussion of the scope even before the draft scope is received.
* If the lead agency will be making the scope available at multiple locations, arrangements with those other locations should be set up even before the draft scope is filed.
* When the project sponsor has sufficient resources and an interest in doing so, the sponsor preparing the final scope with input and guidance from the lead agency can result in a shorter timetable with fewer exchanges of paper.

[E-mail](mailto:deppermitting@dec.ny.gov?subject=SEQR%20Handbook) us if you wish to submit comments. Please be sure to indicate which section or item you are commenting on, and include your name.