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## **PART 314**

### **IMPLEMENTATION OF STATE ENVIRONMENTAL QUALITY REVIEW ACT**

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#### **§ 314.1 Authority and purpose.**

The State Environmental Quality Review Act of 1975, as amended, article 8 of the Environmental Conservation Law, provides that all agencies of the State shall prepare, or cause to be prepared by contract or otherwise, an environmental impact statement on any action they propose or approve which may have a significant effect on the environment. The procedures adopted in this Part shall be effective as of September 1, 1976 and shall apply, in conjunction with regulations adopted by the State University Construction Fund, as prescribed in article 8 of the Environmental Conservation Law.

#### **§ 314.2 Definitions.**

(a) Action means any activity of the State University of New York, except an exempt action as defined in this section, including without limitation:

- (1) physical activities such as construction or other activities which change the use or appearance of any natural resource or structure;
- (2) funding activities such as the proposing, approval or disapproval of contracts, grants, subsidies, loans, tax abatements or exemptions or other forms of direct or indirect financial assistance;
- (3) licensing activities such as the proposing, approval or disapproval of a lease, permit, license, certificate or other entitlement for use or permission to act;
- (4) planning activities such as site selection for other activities and the proposing, approval or disapproval of master or long-range plans, zoning or other land use maps, ordinances or regulations, development plans or other plans designed to provide a program for future activities; and
- (5) policymaking activities such as making, modification or establishment of rules, regulations, procedures,

policies and guidelines.

(b) Environment means the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character.

(c) Environmental analysis means a State University of New York evaluation of the short and long term, primary and secondary environmental effects of an action, with particular attention to the same areas of environmental impacts as would be contained in an environmental impact statement and it is the means by which State University of New York determines whether an action under consideration may or will not have a significant effect on the environment.

(d) Environmental impact statement means a written document prepared in accordance with 6 NYCRR 617.14 and this Part. An environmental impact statement may either be a "draft" or "final" and as appropriate in context it may include a Federal draft or final EIS.

(e) Exempt action means any one of the following:

(1) maintenance, repair, and/or rehabilitation processes involving no substantial changes in existing roads, trails, structures, and facilities;

(2) except as set forth in section 314.9 of this Part actions undertaken or approved prior to the date(s) specified in article 8 of the Environmental Conservation Law. An action shall be deemed to be undertaken or approved prior to such date(s) if, in the case of construction activities, a contract for substantial construction activities has been entered into or if a "continuous program" of on-site construction or modification, and/or natural resource and environmental management has been engaged in, including protection measures against fires, insects, and disease, and the implementation of recognized silvicultural practices in such natural resource and environmental management endeavors, or if, in the case of an action involving Federal participation, either a draft environmental impact statement or a negative declaration has been duly prepared under the National Environmental Policy Act of 1969. For the purpose of this Part, construction activities at the emerging campuses at the State University of New York at Buffalo (Amherst), the State University College at Purchase, the State University College at Old Westbury, the State University of New York at Stony Brook and the Health Sciences Center of the State University of New York at Stone Brook and for the Central Administration of the State University of New York shall be "continuous program";

(3) actions which are immediately necessary on a limited emergency basis for the protection or preservation of life, health, property or natural resources or the environment.

(4) actions of the Legislature of the State of New York or of any court;

(5) with respect to the requirements of subdivision 2 of section 8-0109 of article 8 of the Environmental Conservation Law, 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; and

(6) ministerial actions, i.e., actions 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 such law may require, in some degree, a construction of its language or intent.

(f) Negative declaration means a written statement prepared by State University of New York after conducting an environmental review of an action which announces that State University of New York has determined that the action will not have a significant effect on the environment.

(g) Notice of determination means a written statement prepared by State University of New York after conducting an environmental analysis of an action which announces that State University of New York has determined that the action may have a significant effect on the environment.

(h) Environmental impact assessment form means a written analysis prepared by State University of New York providing an identification and analysis of the environmental impacts of proposed actions.

(i) "Lead agency" means an agency principally responsible for carrying out, funding, or approving an action, and therefore responsible for determining whether an environmental impact statement is required in connection with the action and for the preparation and filing of the statement if one is required.

(j) Type I action means an action listed in 6 NYCRR 617.12 that is listed as likely to require the preparation of an environmental impact statement.

(k) Type II action means an action listed in 6 NYCRR 617.12 that the Commissioner of Environmental Conservation has found will not have a significant effect on the environment.

(l) Unlisted action shall mean all actions not excluded as exempt, not listed as a Type I or Type II action in 6 NYCRR 617.12 or 617.13. If an action is an unlisted action, the limited procedural requirements of section 617.7 shall apply to it.

(m) Typical associated effect means change in one or more natural resources which usually occur because of impacts on other such resources as a result of natural interrelationships or cycles.

### **§ 314.3 General procedure.**

No final State University of New York decision to carry out or approve an action shall be taken until there has been full compliance with the provisions of this Part.

### **§ 314.4 Responsibilities.**

(a) Upon initiating a Type I project, the vice chancellor for capital facilities shall direct that an environmental impact assessment form be prepared. The completed environmental impact assessment form shall be reviewed by an environmental quality review committee, whose membership shall contain one appointee of the vice chancellor for capital facilities and two appointees of the general manager of the State University Construction Fund.

(b) The environmental impact assessment form shall contain sufficient information for the environmental quality review committee to conduct an environmental analysis to determine whether the project may or will not have a significant effect on the environment, and will include identification of those other agencies, including Federal agencies, which have a relation to the project.

(c) Programmatic or generic environmental impact statements, master or campus-wide statements, or statements for comprehensive campus plans may be appropriate for use by the environmental quality review committee to assess the environmental effects of (1) a number of separate projects on a given campus which if considered singly may have minor effects, but if considered together may have significant effects, (2) a chain of contemplated projects, (3) separate projects having generic or common impacts, or (4) programs or plans having wide application or restricting the range of future alternative policies or projects. Such statements will eliminate multiple sequential reviews of the same or similar actions. No further environmental impact statements need be prepared for projects which are included in such a statement.

(d) However, amendments or supplements to such statements must be prepared to reflect impacts which are not addressed or adequately analyzed in such a statement as initially prepared. The public and other agencies shall be informed of such additions through the same notification channels specified in section 314.6 of this Part.

### **§ 314.5 Procedures prior to the preparation of draft environmental impact statements.**

(a) Environmental review of proposed actions. The environmental quality review committee, upon issuing a negative declaration or a notice of determination, shall immediately file such determination as follows:

(1) with the appropriate regional office of the Department of Environmental Conservation; and

(2) with the Commissioner of Environmental Conservation; and

(3) in the files of State University of New York and a copy to the subject State University of New York campus.

(b) Determination of no significant effect--negative declaration. If the environmental quality review committee determines that the project will not have a significant effect on the environment, it shall prepare, circulate, file and make available for public inspection a negative declaration with a statement setting forth the reasons supporting its determination.

(c) Determination of significant effect--notice of determination. If the environmental quality review committee determines that the project may have a significant effect on the environment, it shall immediately have prepared and filed a notice of determination as provided in subdivision (e) of this section. If the project involves other agencies, the environmental quality review committee shall notify such other involved agencies including Federal agencies, of its determination, request the coordination of reviews by the agencies, and inform them of the need to resolve which agency shall be the lead agency in accordance with 6 NYCRR Part 617.

(d) State University--non-lead agency status. If State University of New York is not the lead agency for a project that may have a significant effect on the environment, it shall

(1) provide its views where appropriate and, to the extent practical, provide appropriate technical analysis and support;

(2) make written findings pursuant to 6 NYCRR 617.9.

(e) Contents of negative declaration and notices of determination. All negative declarations and notices of determination shall contain the following:

(1) a project identifying number;

(2) a brief description of the project;

(3) the location of the project (county and city, town or village);

(4) in the case of a negative declaration, a statement that the environmental quality review committee has determined that the project will not have a significant effect on the environment;

(5) in the case of a notice of determination, a brief description of the possible significant effects of the project; and

(6) the name and address of the lead agency and the name and telephone number of an officer who can provide further information.

**§ 314.6 Notices of completion of draft environmental impact statements and public hearings and notices thereof.**

(a) Notices of completion of draft environmental impact statements. Upon the completion of a draft environmental impact statement, the environmental quality review committee shall immediately prepare, file and make available for public inspection a notice of completion as provided in paragraphs (1), (2) and (3) of this subdivision. All draft and final environmental impact statements prepared by or at the request of the environmental quality review committee shall contain the information specified in 6 NYCRR 617.10.

(1) Contents of notices of completion. All notices of completion shall contain the following:

(i) a project identifying number;

(ii) a brief description of the project;

(iii) the location of the project and its potential impacts and effects (county and city, town, village); and

(iv) the name and address of the lead agency and the name and telephone number of the officer who can provide further information;

(v) a statement requesting comments on the draft environmental impact statement to be received and considered by the environmental quality review committee at State University of New York. The notice shall specify the public review and comment period on the draft environmental impact statement, which shall be for not less than 30 calendar days from the date of filing and circulation of the notice or not less than 10 calendar days following any public hearing on the draft environmental impact statement.

(2) Circulating notices of completion. All notices of completion shall be circulated to the following:

(i) all other agencies involved in the project including the Commissioner of the Department of Environmental Conservation and appropriate regional office;

(ii) all persons who have requested it;

(iii) the State Clearing House; relevant regional clearing house designated under Federal office of management and budget circular A-95.

(iv) the subject State University of New York campus.

(3) Filing notices of completion. All notices of completion shall be filed and available for public inspection as follows:

(i) with the Commissioner of Environmental Conservation;

(ii) with the appropriate regional office of the Department of Environmental Conservation;

(iii) with the county clerk whose jurisdiction most closely coincides with the location of the project and its potential impacts and effects;

(iv) with the editor of the Department of Environmental Conservation Monitor;

(v) in the files of State University of New York.

(b) Filing and making available draft environmental impact statements. All draft environmental impact statements prepared by State University of New York shall be filed with and made available for public inspection as follows:

(1) with the Commissioner of Environmental Conservation;

(2) with the appropriate regional office of the Department of Environmental Conservation;

(3) with the county clerk whose jurisdiction most closely coincides with the location of the project and its potential impacts and effects;

(4) in the files of State University of New York and a copy to the subject State University of New York campus;

(5) if other agencies are involved in the approval of the action, with each such agency; and

(6) one copy to persons requesting it.

(c) Public hearings on draft environmental impact statements and notices thereof.

(1) Upon the completion of a draft environmental impact statement, the environmental quality review committee shall determine whether or not to conduct a public hearing on the draft environmental impact statement. In making this determination, the environmental quality review committee shall consider the requirements for hearings specified by other statutes and regulations, the degree of interest in the project shown or anticipated on the part of the public or other agencies, the magnitude of the project and its effects, the extent to which a public hearing can aid the State University of New York decision-making by providing a forum for, or an efficient mechanism for the collection of, public comment. Wherever practicable, an environmental quality review public hearing shall be made part of or held in conjunction with other public hearings on the project as may be conducted by State University of New York or other agencies.

(2) If a hearing is to be held, notice thereof may be contained in the notice of completion or, if not so contained, shall be given in the same manner in which the notice of completion is sent, filed and circulated pursuant to subdivision (a) of this section. The notice shall specify the time, place and purpose of the hearing and shall contain a summary of the information contained in the notice of completion of the draft EIS. The notice of hearing shall be filed as prescribed in subdivision (b) of this section and shall also be published at least 14 calendar days in advance of the public hearing in a newspaper of general circulation in the area of the potential impacts and effects of the project.

(3) If so held, the hearing shall be conducted by the environmental quality review committee not less than 15 calendar days or more than 60 calendar days after the filing of the draft environmental impact statement pursuant to subdivision (b) of this section, except as State University of New York may otherwise provide where it determines that additional time is necessary for public or other agency review of the draft environmental impact statement or where a different hearing date is required as appropriate under applicable statute or

regulation.

**§ 314.7 Final environmental impact statement procedures.**

(a) Except as provided in paragraphs (1) and (2) of this subdivision, the environmental quality review committee shall prepare or cause to be prepared a final environmental impact statement within 45 calendar days after the close of any hearing or within 60 calendar days after the filing of the draft environmental impact statement whichever last occurs.

(1) If the proposed project has been withdrawn or if, on the basis of the draft environmental impact statement or a hearing, the environmental quality review committee has determined that the projects will not have a significant effect on the environment, no final environmental impact statement shall be prepared.

(2) The environmental quality review committee may extend the last date for preparation of the final environmental impact statement (i) where it determines that additional time is necessary to complete the statement adequately, or (ii) to meet the requirements of other statutes or regulations, or (iii) where problems with the proposed project requiring material reconsideration or modification have been identified, or (iv) for other good cause.

(3) The final environmental impact statement shall reflect a revision and updating of the matters contained in the draft environmental impact statement in the light of further department review, comments received and the record of any hearing.

(b) Immediately upon the completion of a final environmental impact statement, the environmental quality review committee shall prepare, file, circulate and make available for public inspection a notice of completion of a final environmental impact statement in the manner specified in subdivision (a) of section 314.6 of this Part, except that it shall not contain the statement described in subparagraph (iv) of paragraph (1) of subdivision (a) of such section.

Copies of a final environmental impact statement shall be filed and made available for review in the same manner as the draft environmental impact statement pursuant to subdivision (b) of section 314.6 of this Part.

**§ 314.8 Projects involving Federal participation.**

(a) If a project under consideration by the environmental quality review committee may involve a "major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969", then the procedures specified in this section shall be followed.

(b) In the case of a project under the National Environmental Policy Act of 1969 for which draft and final environmental impact statements have been prepared, the environmental quality review committee is not required to prepare an environmental quality review impact statement or to make findings pursuant to section 314.10 of this Part.

(c) In the case of a project for which has been prepared a negative declaration or other written threshold determination that the project will not require a Federal impact statement under the National Environmental Policy Act of 1969, the environmental quality review committee shall determine whether or not the action may have a significant effect on the environment pursuant to article 8 of the Environmental Conservation Law, 6 NYCRR Part 617 and this Part and the project shall be fully subject to such law, rules and regulations.

Section 314.9 Projects undertaken or approved prior to the effective date(s) of article 8 of the Environmental Conservation Law.

(a) Except as provided in subdivision (b) of this section, no environmental impact statement shall be required for projects undertaken or approved prior to the effective date(s) of article 8 of the Environmental Conservation Law.

(b) If, after the effective date(s) of article 8 of the Environmental Conservation Law, the environmental quality review committee proposes to modify an action undertaken or approved prior to such date(s) which modification may have a significant adverse effect on the environment, such modifications shall be an action fully subject to this Part.

**§ 314.10 Filing of State environmental quality review documents.**

(a) When State University of New York is the lead agency, its decision whether or not to approve an action which has been the subject of an environmental impact statement shall be made within 30 calendar days of the filing of a final environmental impact statement.

(b) When State University of New York decides to carry out or approve an action which may have a significant effect

on the environment, it shall make the following findings in a written decision that, consistent with social, economic and other essential considerations of State policy, from among the reasonable alternatives thereto, and the action to be carried out or approved:

(1) minimizes or avoids adverse environmental effects to the maximum extent possible, including the effects disclosed in the relevant environmental impact statement;

(2) to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process are minimized or avoided by incorporating as conditions to the decision those mitigative measures which are identified as practicable;

(3) the action to be carried out or approved meets the requirements of this Part; and

(4) sets forth the facts and conclusions relied upon in the environmental impact statement supporting its decision, and indicating the social, economic and other factors and standards which formed the basis of its decision.

(c) The decision shall be filed immediately in the same manner as prescribed for the draft environmental impact statement in section 314.7(b) of this Part.

(d) The office for capital facilities of State University shall maintain files available for public inspection of all negative declarations, notices of determinations of significance, notices of completion of draft and final environmental impact statements and decisions it has prepared or caused to be prepared. Copies of draft and final environmental impact statements shall be available to the public in accordance with the regulations of State University of New York on public access to university records contained in Part 311 of this Title.