

RULES OF THE CITY OF NEW YORK

Title 62, Chapter 5: Rules of Procedure for City Environmental Quality Review (CEQR)

as amended January 26, 2014

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§5-01. Source of Authority and Statement of Purpose.

Section 192(e) of the Charter provides that the City Planning Commission "shall oversee implementation of laws that require environmental reviews of actions taken by the city" and that the Commission "shall establish by rule procedures for environmental reviews of proposed actions by the city where such reviews are required by law." These rules are intended to exercise that mandate by redefining lead agencies within the city in accordance with law, prescribing the relationship of the new Office of Environmental Coordination with those agencies and regulating scoping. The organization and numbering of the various sections of these rules are not intended to correspond precisely to Executive Order 91. [43 RCNY Chapter 6, also, see Appendix A hereto]. Rather, these rules are an overlay on Executive Order 91. Where these rules conflict with Executive Order 91, these rules supersede the Executive Order.

In deciding upon the appropriate lead agency for certain classes of actions taken by the city, the City Planning Commission has selected the involved agency "principally responsible for carrying out, funding or approving" those actions. 6 NYCRR §617.2(v). For private ULURP applications, for §197-a plans and for all actions primarily involving a zoning map or text change, the City Planning Commission, responsible under the Charter "for the conduct of planning relating to the orderly growth, improvement and future development of the city" (Charter §192(d)), is the lead agency. For other ULURP applications, the city agency applicant, the agency that will generally be involved with ensuring programmatic implementation of the action, is the lead agency. Most of the remaining lead agency designations in the rules similarly address other approvals required by the Charter by designating the agency charged with ensuring programmatic implementation as the lead agency for those approvals. In appropriate cases, a lead agency designated by the rules may transfer its lead agency status to another involved agency.

The rules ensure that lead agencies have access to the technical and administrative expertise of the Office of Environmental Coordination. Finally, the rules provide for involved and interested agencies, including the City Council, to participate in the environmental review process, and ensure a role for the public in scoping.

§5-02. General Provisions.

(a) CONTINUATION OF EXECUTIVE ORDER NO. 91 [43 RCNY §6-01 ET. SEQ., APPENDIX A OF THIS CHAPTER].

Until the City Planning Commission promulgates further rules governing environmental review of actions taken by the city, Executive Order No. 91 of August 24, 1977, as amended (Executive Order 91), shall continue to govern environmental quality review in the city except where inconsistent with these rules, provided, however, that the following provisions of Executive Order 91 shall not apply: the definitions of "Agency", "Lead Agencies" and "Project data statement" defined in §6-02, subdivision (b) of §6-03, subdivision (a) of §6-05, the introductory paragraph of subdivision (b) of §6-05, paragraphs one and two of subdivision (a) of §6-12, §6-14, and subdivision (b) of the TYPE II part of §6-15.

(b) RULES OF CONSTRUCTION.

(1) All functions required by Executive Order 91 to be performed by the "lead agencies," as formerly defined in §6-02 of such Executive Order, shall be performed by the lead agency prescribed by or selected pursuant to these rules or by the Office of Environmental Coordination where authorized by these rules.

(2) Wherever Executive Order 91 explicitly or by implication refers to subdivision (b) of the Type II part of §6-15 of such Executive Order, such reference shall be deemed to be to §617.13(d) of the SEQRA Regulations.

(3) The reference to "a determination pursuant to §6-03(b) of this Executive Order" contained in Executive Order 91 §6-05(b)(1) shall be deemed to refer to selection of a lead agency pursuant to §5-03 of these rules.

(4) The Office of Environmental Coordination shall succeed to functions performed by the City Clerk pursuant to Executive Order 91 with respect to the receipt and filing of documents.

(5) References in these rules and in Executive Order 91 to specific agencies and provisions of law shall be deemed to apply to successor agencies and provisions of law.

(c) DEFINITIONS.

(1) All definitions contained in Executive Order 91, other than the definitions of "agency" and "lead agencies", shall apply to these rules.

(2) "Action" as defined in §6-02 of Executive Order 91 includes all contemporaneous or subsequent actions that are included in a review pursuant to City Environmental Quality Review.

(3) The following additional definitions shall apply to these rules unless otherwise noted:

Agency. "Agency" shall mean any agency, administration, department, board, commission, council, governing body or other governmental entity of the city of New York, including but not limited to community boards, borough boards and the offices of the borough presidents, unless otherwise specifically referred to as a state or federal agency.

City Environmental Quality Review. "City Environmental Quality Review" (CEQR) shall mean the environmental quality review procedure established by Executive Order 91 as modified by these rules.

Determination of Significance. "Determination of significance" shall mean a negative declaration, conditional negative declaration or notice of determination (positive declaration).

Interested Agency. "Interested agency" shall mean an agency that lacks jurisdiction to fund, approve or directly undertake an action but requests or is requested to participate in the review process because of its specific concern or expertise about the proposed action.

Involved Agency. "Involved agency" shall mean any agency that has jurisdiction to fund, approve or directly undertake an action pursuant to any provision of law, including but not limited to the Charter or any local law or resolution. The City Council shall be an involved agency for all actions for which, as a component of the approval procedure for the action or a part thereof, the City Council has the power to approve or disapprove, regardless of whether the City Council chooses to exercise such power.

Lead Agency. "Lead agency" shall mean the agency principally responsible for environmental review pursuant to these rules.

Scoping. "Scoping" shall mean the process by which the lead agency identifies the significant issues related to the proposed action which are to be addressed in the draft environmental impact statement 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 non-relevant issues.

SEQRA Regulations. "SEQRA Regulations" shall mean Part 617 of Volume 6 of New York Codes, Rules and Regulations.

(d) APPLICABILITY.

These rules and Executive Order 91 shall apply to environmental review by the city that is required by the State Environmental Quality Review Act (Environmental Conservation Law, Article 8) and regulations of the State Department of Environmental Conservation thereunder and shall not be construed to require environmental quality review of an action where such

review would not otherwise be required by such act and regulations, or to dispense with any such review where it is otherwise required.

§5-03. Establishment of Lead Agency.

(a) GENERAL RULE.

Where only one agency is involved in an action, that agency shall be the lead agency.

(b) ACTIONS SUBJECT TO ULURP AND CHARTER SECTIONS 197-A, 200, 201, AND 668.

(1) For actions subject to the Uniform Land Use Review Procedure of §197-c of the Charter (ULURP), and for which the applicant is not a city agency, the City Planning Commission shall be the lead agency.

(2) For actions that involve plans for the development, growth and improvement of the city, its boroughs and community districts (Charter §197-a), the City Planning Commission shall be the lead agency.

(3) For actions that involve zoning map or text changes (Charter §200 and/or 201), the following rules shall apply:

(i) If the only approval subject to ULURP or to Charter § 200 or 201 is a zoning map or text change, the City Planning Commission shall be the lead agency.

(ii) If the applicant for any action requiring a zoning map or text change is not a city agency, the City Planning Commission shall be the lead agency.

(iii) If the action involves a zoning map or text change, in addition to another approval under Charter §197-c (ULURP) for which there is a city agency applicant, then the city agency applicant shall be the lead agency, provided, however, that the City Planning Commission shall be the lead agency if:

(A) The action involves a zoning map or text change that covers or may apply to areas substantially larger than the properties covered by the non-zoning approvals required under Charter §197-c; or

(B) The city agency applicant and the Chair of the City Planning Commission agree that the action involves a zoning map or text change that changes the uses permitted so as to substantially alter the area zoning pattern.

(4) For all other actions subject to §197-c of the Charter (ULURP) for which the applicant is a city agency, and for actions subject to §668 of the Charter for which the applicant is a city agency, the city agency applicant shall be the lead agency. Where there is more than one city agency applicant, the city agency applicants shall agree upon which of them will be the lead agency, using the selection procedure set forth in subdivision (h) of this section.

(5) Where no other provision of this section applies and an action involves a special permit or variance from the Board of Standards and Appeals (Charter §668) for which the applicant is not a city agency, the Board of Standards and Appeals shall be the lead agency.

(c) SECTION 195 ACQUISITIONS OF OFFICE SPACE OR EXISTING BUILDINGS FOR OFFICE USE.

For actions involving acquisitions of office space or existing buildings for office use (Charter §195), the agency filing the notice of intent to acquire shall be the lead agency.

(d) LOCAL LAWS.

The City Council and the Office of the Mayor shall be co-lead agencies for local laws. Either agency may at any time delegate to the other its lead agency status and act instead as an involved agency. In addition, after introduction of a proposed local law, the City Council may assume sole lead agency status after giving the Mayor five days notice.

(e) FRANCHISES, REVOCABLE CONSENTS, AND CONCESSIONS.

For actions involving franchises, revocable consents and concessions, the responsible agency as defined in Charter §362(c) shall be the lead agency.

(f) LEASING OF WHARF PROPERTY FOR WATERFRONT COMMERCE OR NAVIGATION AND WATERFRONT PLANS.

For actions involving the leasing of wharf property belonging to the city primarily for purposes of waterfront commerce or in furtherance of navigation (Charter §1301(2)(f)), the Department of Business Services shall be the lead agency, provided that the Department of Transportation shall be the lead agency for such actions when it is acting pursuant to Charter §2903(c)(2). For actions involving determinations of the Commissioner of Business Services pursuant to Charter §1302 (waterfront plans), the Department of Ports and Trade shall be the lead agency.

(g) SELECTION OF LEAD AGENCY IN THE CASE OF MULTIPLE INVOLVED AGENCIES.

(1) Subdivision (b) of this section, which governs lead agency designation for actions involving approvals pursuant to ULURP or §197-a, 200, 201 or 668 of the Charter, shall always govern determination of the lead agency regardless of whether the action involves additional approvals pursuant to other provisions of law.

(2) For any other action involving more than one agency, the agencies designated in subdivisions (c) through (f) of this section and any agencies involved in any required city approval, other than approvals described in such subdivisions, shall agree upon which of them will be the lead agency, using the selection procedure set forth in subdivision (h) of this section.

(h) PROCEDURE FOR SELECTION OF LEAD AGENCY.

In selecting a lead agency where agreement among agencies is required by this section, and in deciding whether transfer of lead agency status is appropriate, the agencies making the selection or decision shall determine which agency is most appropriate to act as lead agency for the particular action. In making such determination, such agencies shall consider, but shall not be limited to considering, the following criteria:

(1) The agency that will have the greater degree of responsibility for planning and implementing the action;

(2) The agency that will be involved for a longer duration;

(3) The agency that has the greater capability for providing the most thorough environmental assessment;

(4) The agency that has the more general governmental powers as compared to single or limited powers or purposes;

(5) The agency that will provide the greater level of funding for the action;

(6) The agency that will act earlier on the proposed action; and

(7) The agency that has the greater role in determining the policies resulting in or affecting the proposed action.

(i) TRANSFER OF LEAD AGENCY STATUS.

Lead agency status may be transferred from the lead agency, at its discretion, to an involved agency that agrees to become the lead agency. In deciding whether a transfer of lead agency status is appropriate, agencies shall use the selection procedure set forth in subdivision (h) of this

section. Notice of transfer of lead agency status must be given by the new lead agency to the applicant and all other involved and interested agencies within 10 days of the transfer. The Chair of the City Planning Commission may act on behalf of such Commission pursuant to this subdivision.

(j) **SELECTION OF LEAD AGENCY WHERE ACTIONS INVOLVE CITY AND STATE AGENCIES.**

Where an action involves both city and state agencies, the city agency prescribed by or selected pursuant to subdivisions (a) through (i) of this section shall, together with such state agencies, participate in selection of the lead agency pursuant to SEQRA, and such selection shall be binding upon the city. The criteria set forth in §617.6(e)(5) of the SEQRA Regulations shall be considered in deciding whether or not a city agency shall serve as lead agency. The Office of Environmental Coordination shall perform the functions set forth in subdivision (d) of §5-04 of these rules.

§5-04. The Office of Environmental Coordination.

(a) The Director of City Planning and the Commissioner of the Department of Environmental Protection shall designate persons from the staffs of the Departments of City Planning and Environmental Protection who shall comprise the Office of Environmental Coordination (OEC). The OEC shall provide assistance to all city agencies in fulfilling their environmental review responsibilities.

(b) The OEC shall perform any environmental review function assigned to it by a lead agency, except the OEC may not issue, amend or rescind a determination of significance, notice of completion of a draft or final environmental impact statement, written findings following issuance of a final environmental impact statement, or analogous statements, notices or findings for a supplemental environmental impact statement. In addition, the lead agency may not delegate to the OEC its responsibility to issue the final scope or to attend the scoping meeting; however, the lead agency may delegate to the OEC the power to chair the scoping meeting.

(c) In addition to any other functions the OEC may perform pursuant to these rules, the OEC shall:

(1) Work with appropriate city agencies to develop and maintain technical standards and methodologies for environmental review and, upon request, assist in the application by agencies of such standards and methodologies;

(2) Work with appropriate city agencies to develop and maintain a technical database that may be utilized by applicants and city agencies in completing the standardized environmental

assessment statement described in this subdivision and in preparation of draft and final environmental impact statements;

(3) Prepare and maintain a standardized environmental assessment statement, which shall provide guidance in determining whether the action may have a significant effect on the environment;

(4) At the request of a lead agency, coordinate the work of the technical staffs of interested agencies in order to complete environmental review, and expedite responses by interested agencies to requests of the lead agency;

(5) (i) Receive and maintain on file notifications of commencement of environmental review, determinations of significance (including completed environmental assessment statements), draft and final scopes issued pursuant to §5-07 of these rules, draft and final environmental impact statements, and significant supporting documentation comprising the official records of environmental reviews,

(ii) provide to the public upon request, or make available for inspection by the public during normal business hours, materials maintained on file pursuant to this paragraph,

(iii) publish a quarterly listing of all notifications of commencement, determinations of significance, draft and final scopes and draft and final environmental impact statements received and filed pursuant to this paragraph, and

(iv) in its discretion, advise lead agencies as to whether such documents are consistent with standards and methodologies developed pursuant to this subdivision and reflect proper use of the standardized environmental assessment statement;

(6) Provide to lead agencies staff training, management assistance, model procedures, coordination with other agencies, and other strategies intended to remedy any problems that arise with respect to consistency with standards and methodologies developed pursuant to this subdivision or proper use of the standardized environmental assessment statement;

(7) Provide to lead agencies a format for notices of public scoping meetings, assist lead agencies in ensuring that public scoping meetings are conducted in an effective manner, and, to the extent the OEC deems appropriate, comment on the draft scope and participate in such meetings;

(8) Prepare standardized forms for notifications of commencement of environmental review, determinations of significance, notices of completion of draft and final environmental impact statements, and, as may be appropriate, other environmental review documents; and

(9) Work with appropriate city agencies to develop and implement a tracking system to ensure that mitigation measures are implemented in a timely manner, and to evaluate and report on the effectiveness of mitigation measures.

(d) Any state agency that seeks a determination whether a city agency shall serve as the lead agency for an action that involves city and state agencies should initially communicate with the OEC. Upon receipt of such communication, the OEC shall ascertain the city agency which is designated as lead agency by or pursuant to these rules and shall notify such agency of such communication. Such designated agency may then act pursuant to subdivision (j) of §3 of these rules.

(e) Where an action or part thereof has been or will be reviewed by a federal agency, the OEC shall assist city agencies in coordinating review with the appropriate federal agency.

§5-05. Environmental Review Procedures.

(a) THRESHOLD DETERMINATION.

(1) In the case of any action for which a lead agency is prescribed by §5-03 of these rules, and thus for which no agreement among involved agencies is necessary, only such lead agency may determine that such action, considered in its entirety, requires environmental review, and such determination shall be binding upon the city. The OEC shall, upon the request of such agency, assist in such determination.

(2) In the case of any action for which agreement among involved agencies is necessary for selection of a lead agency, if an agency that could be the lead agency for the particular action pursuant to subdivisions (b) through (g) of §5-03 of these rules determines that such action may require environmental review, then the lead agency shall be agreed upon as provided in §3 of these rules, and such lead agency shall determine whether such action, considered in its entirety, requires environmental review. Such determination shall be binding upon the city. The OEC shall assist in any determination made pursuant to this paragraph upon the request of the agency making such determination.

(3) Nothing contained in this subdivision shall be construed to require an affirmative determination, whether formal or informal, that an action is exempt from environmental review, or is a Type II action pursuant to the SEQRA Regulations, where such determination would not otherwise be required by law.

(b) OTHER DETERMINATIONS.

(1) After the determination that an action requires environmental review, the lead agency shall notify the OEC that it is commencing environmental review and complete or cause to be completed the standardized environmental assessment statement provided by the OEC. Such statement shall provide guidance in determining whether the action may have a significant effect on the environment. The OEC and interested and involved agencies shall, upon the request of the lead agency, assist the lead agency in completing such statement.

(2) The OEC and interested and involved agencies shall, upon the request of the lead agency, assist such lead agency with respect to any aspect of a determination of significance and/or a draft, final and/or supplemental environmental impact statement.

(3) Whenever, in the preparation of a draft environmental impact statement, the lead agency identifies a potential significant impact, the lead agency shall consult with any agency that has primary jurisdiction to carry out possible mitigations, and with any city agency that has primary regulatory jurisdiction over the subject matter of such impact.

(4) Lead agencies shall send copies of the following to the OEC upon issuance: notifications of commencement of environmental review, determinations of significance (including completed environmental assessment statements), draft and final scopes, draft and final environmental impact statements. In addition, lead agencies shall forward to the OEC significant supporting documentation comprising the official records of environmental reviews.

(c) TYPE II.

The following actions are not subject to review under City Environmental Quality Review, the State Environmental Quality Review Act (Environmental Conservation Law, Article 8) or the SEQRA Regulations, subject to § 5-05(d) of these rules:

(1) Special permits for physical culture or health establishments of up to 20,000 gross square feet, pursuant to § 73-36 of the Zoning Resolution;

(2) Special permits for radio and television towers, pursuant to § 73-30 of the Zoning Resolution;

(3) Special permits for ambulatory diagnostic or treatment health care facilities, pursuant to § 73-125 of the Zoning Resolution;

(4) Special permits to allow a building or other structure to exceed the height regulations around airports, pursuant to § 73-66 of the Zoning Resolution;

(5) Special permits for the enlargement of buildings containing residential uses by up to 10 units, pursuant to § 73-621 of the Zoning Resolution;

- (6) Special permits for eating and drinking establishments of up to 2,500 gross square feet with accessory drive-through facilities, pursuant to § 73-243 of the Zoning Resolution;
- (7) Acquisition or lease disposition of real property by the City, not involving a change of use, a change in bulk, or ground disturbance;
- (8) Construction or expansion of primary or accessory/appurtenant park structures or facilities involving less than 10,000 square feet of gross floor area;
- (9) Park mapping, site selection or acquisition of less than ten (10) acres of existing open space or natural areas;
- (10) Authorizations for a limited increase in parking spaces for existing buildings without parking, pursuant to § 13-442 and § 16-341 of the Zoning Resolution;
- (11) Special permits for accessory off-street parking facilities, which do not increase parking capacity by more than eighty-five (85) spaces or involve incremental ground disturbance, pursuant to § 16-351 of the Zoning Resolution;
- (12) Special permits for public parking garages and public parking lots, which do not increase parking capacity by more than eighty-five (85) spaces or involve incremental ground disturbance, pursuant to § 16-352 of the Zoning Resolution; and
- (13) Special permits for additional parking spaces, which do not increase parking capacity by more than eighty-five (85) spaces or involve incremental ground disturbance, pursuant to § 13-45 of the Zoning Resolution.

(d) TYPE II PREREQUISITES.

- (1) An action listed in § 5-05(c), which is also classified as Type I pursuant to 6 NYCRR Part 617.4, shall remain Type I and subject to environmental review.
- (2) An action listed in § 5-05(c)(2)-(5), or (8) of these rules involving ground disturbance shall remain subject to environmental review, unless it is determined that any potentially significant hazardous materials impacts will be avoided.
- (3) An action listed in § 5-05(c)(2), (3), (5), or (8) of these rules involving excavation of an area that was not previously excavated shall remain subject to environmental review, unless it is determined that the project site is not archaeologically sensitive.
- (4) An action listed in § 5-05(c)(4) of these rules shall remain subject to environmental review, unless it is determined that any potentially significant noise impacts will be avoided.
- (5) An action listed in § 5-05(c)(2), (3), (5), or (8) of these rules involving the removal or alteration of significant natural resources shall remain subject to environmental review.

(6) An action listed in § 5-05(c)(2), (4), (5), (6), (8), or (11)-(13) of these rules shall remain subject to environmental review if the project site is:

(i) wholly or partially within any historic building, structure, facility, site or district that is calendared for consideration or eligible for designation as a New York City Landmark, Interior Landmark or Scenic Landmark;

(ii) substantially contiguous to any historic building, structure, facility, site or district that is designated, calendared for consideration or eligible for designation as a New York City Landmark, Interior Landmark or Scenic Landmark; or

(iii) wholly or partially within or substantially contiguous to any historic building, structure, facility, site or district, or archaeological or prehistoric site that is listed, proposed for listing or eligible for listing on the State Register of Historic Places or National Register of Historic Places.

§5-06. Involved and Interested Agencies; Required Circulation.

(a) The lead agency and the OEC shall make every reasonable effort to keep involved and interested agencies informed during the environmental review process and to facilitate their participation in such process. If the City Council is involved in an action, staff of the lead agency and/or staff of the OEC shall be made available to explain determinations made by the lead agency to the City Council or the appropriate City Council committee or staff.

(b) Any written information submitted by an applicant for purposes of a determination by the lead agency whether an environmental impact statement will be required by law, and documents or records intended to define or substantially redefine the overall scope of issues to be addressed in any draft environmental impact statement required by law, shall be circulated to all affected community or borough boards, where such circulation is required by the Charter.

(c) If the City Council is involved in an action, any written information, documents or records that are required to be circulated to involved agencies or to affected community boards or borough boards shall be circulated to the City Council.

§5-07. Scoping.

Following the issuance of a notice of determination (positive declaration), the lead agency shall coordinate the scoping process, which shall ensure that all interested and involved agencies (including the City Council where it is interested or involved), the applicant, the OEC, community and borough boards, borough presidents and the public are able to participate. The scoping process shall include a public scoping meeting and take place in accordance with the following procedure:

(a) DRAFT SCOPE.

Within fifteen days after issuance of a notice of determination (positive declaration), the lead agency shall issue a draft scope, which may be prepared by the applicant but must be approved by the lead agency. The lead agency may consult with the OEC and other agencies prior to issuance of the draft scope.

(b) PUBLIC NOTICE AND COMMENT.

Upon issuance of the draft scope and not less than thirty nor more than forty-five days prior to the holding of the public scoping meeting, the lead agency shall publish in the City Record a notice indicating that a draft environmental impact statement will be prepared for the proposed action and requesting public comment with respect to the identification of issues to be addressed in the draft environmental impact statement. Such notice shall be in a format provided by the OEC and shall state that the draft scope and the environmental assessment statement may be obtained by any member of the public from the lead agency and/or the OEC. Such notice shall also contain the date, time and place of the public scoping meeting, shall provide that written comments will be accepted by the lead agency through the tenth day following such meeting, and shall set forth guidelines for public participation in such meeting.

(c) AGENCY NOTICE AND COMMENT.

Upon issuance of the draft scope and not less than thirty nor more than forty-five days prior to the holding of the public scoping meeting, the lead agency shall circulate the draft scope and the environmental assessment statement to all interested and involved agencies (including the City Council where it is interested or involved), to the applicant, to the OEC and to agencies entitled to send representatives to the public scoping meeting pursuant to §197-c(d) or 668(a)(7) of the Charter. Together with the draft scope and the environmental assessment statement, a letter shall be circulated indicating the date, time and place of the public scoping meeting, and stating that comments will be accepted by the lead agency through the tenth day following such meeting. The lead agency may consult with other agencies regarding their comments, and shall forward any written comments received pursuant to this subdivision to the OEC.

(d) PUBLIC SCOPING MEETING.

The lead agency shall chair the public scoping meeting. In addition to the lead agency, all other interested and involved agencies that choose to send representatives (including the City Council where it is interested or involved), the applicant, the OEC, and agencies entitled to send representatives pursuant to §197-c(d) or 668(a)(7) of the Charter may participate. The meeting shall include an opportunity for the public to observe discussion among interested and involved agencies, agencies entitled to send representatives, the applicant and the OEC. Reasonable time

shall be provided for the public to comment with respect to the identification of issues to be addressed in the draft environmental impact statement. The OEC shall assist the lead agency in ensuring that the public scoping meeting is conducted in an effective manner.

(e) FINAL SCOPE.

Within thirty days after the public scoping meeting, the lead agency shall issue a final scope, which may be prepared by the applicant and approved by the lead agency. The lead agency may consult further with the OEC and other agencies prior to issuance of the final scope. Where a lead agency receives substantial new information after issuance of a final scope, it may amend the final scope to reflect such information.

(f) SCOPING OF CITY AGENCY ACTIONS.

For actions which do not involve private applications, nothing contained in these rules shall be construed to prevent a lead agency, where deemed necessary for complex actions, from extending the time frames for scoping set forth in this section, or from adding additional elements to the scoping process.

§5-08. Applications and Fees.

(a) APPLICATIONS.

Applications submitted for City Environmental Quality Review for actions that require such review shall be submitted to the lead agency prescribed by these rules, or to an agency that could be the lead agency for the particular action pursuant to §5-03 of these rules. Such applications shall include information required to be obtained from applicants in order for the lead agency to complete or cause to be completed the standardized environmental assessment statement, and such other documents and additional information as the lead agency may require to make a determination of significance. In addition, except as otherwise provided in these rules, such applications shall conform to the requirements of Executive Order 91. Applicants shall file twenty-five copies of each application.

(b) FEES.

Except as otherwise provided by this section, fees in effect on the effective date of these rules pursuant to Executive Order 91 and codified as §3-02 of these rules shall continue to govern City Environmental Quality Review applications, unless the City Planning Commission shall by rule modify such fees. Such fees shall be submitted to the lead agency prescribed by these rules, or to an agency that could be the lead agency for the particular action pursuant to §5-03 of these rules, and shall be in the form of a check or money order made out to the "City of New York."

§5-09. Transition Section.

(a) An action shall not be subject to these rules, but shall comply with Executive Order 91, as in effect prior to the effective date of these rules, where:

(1) a classification as exempt, excluded or Type II has been made prior to the effective date of these rules;

(2) a project data statement has been completed more than thirty days prior to the effective date of these rules and a determination of significance has not been made prior to the effective date of these rules;

(3) a negative declaration or a conditional negative declaration has been issued prior to the effective date of these rules; or

(4) a notice of determination (positive declaration) has been issued more than thirty days prior to the effective date of these rules; provided, however, that if a negative declaration or conditional negative declaration is rescinded, or if a classification as exempt, excluded or Type II is no longer applicable, or if a supplemental environmental impact statement is required, or if a notice of determination (positive declaration) has been issued less than thirty days prior to the effective date of these rules or is issued on or after the effective date of these rules, these rules shall apply, and the lead agency prescribed by or selected pursuant to these rules shall thereupon assume lead agency status at the earliest time practicable.

(b) Except as provided in subdivision (a) of this section, the lead agency prescribed by or selected pursuant to these rules shall assume lead agency status at the earliest time practicable. If a determination of significance has not been made and such lead agency determines that the action requires environmental review, it shall notify the OEC that it is commencing environmental review and shall complete or cause to be completed the standardized environmental assessment statement provided by the OEC, regardless of whether a project data statement has been completed. However, such lead agency shall not be required to engage in scoping pursuant to §5-07 of these rules if a final scope has already been prepared. Until the lead agency prescribed by or selected pursuant to these rules assumes lead agency status, the action shall be subject to Executive Order 91 as in effect prior to the effective date of these rules; however, after the effective date of these rules, the prior lead agency or agencies shall not issue a determination of significance or notice of completion of a draft or final environmental impact statement, classify an action as exempt, excluded or Type II, convene a scoping meeting or conduct a public hearing pursuant to CEQR.

§5-10. Severability.

The provisions of these rules shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of these rules, or the applicability thereof to any person or circumstance, shall be held invalid, the remainder of these rules and the application thereof shall not be affected thereby.

§5-11. Effective Date.

These rules shall take effect on October 1, 1991.