NJEDA
ECONOMIC DEVELOPMENT AUTHORITY

Draft Amended Offshore Wind Tax Credit Program Rules Proposal for Informal Public Comment

PURPOSE OF DOCUMENT

These draft rule amendments and repeal include recommendations related to program design and administration for New Jersey's Offshore Wind Tax Credit Program as amended by the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156.

The proposed amendments revise various sections of the rules implementing the program. The proposed amendments also repeal N.J.A.C. 19:31-20.8, which sets forth general terms for a tax credit certificate, as those terms are now contained in the approval letter, based on the revised definition of "approval letter" in N.J.A.C. 19:31-2. Full text of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 19:31-20.8.

In accordance with Executive Order 63, these draft rule amendments are being provided to enable the public to provide input as the New Jersey Economic Development Authority begins to launch the programs contained in the new law.

BACKGROUND

The New Jersey Economic Development Authority serves as the State's principal agency for driving economic growth. The Authority is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to build strong and dynamic communities, create good jobs for New Jersey residents, and provide pathways to a stronger and fairer economy. Through partnerships with a diverse range of stakeholders, the Authority creates and implements initiatives to enhance the economic vitality and quality of life in the State and strengthen New Jersey's long-term economic competitiveness.

Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020 into law on January 7, 2021. A courtesy copy of this act can be found by clicking here. The law creates a package of tax incentive, financing, and grant programs that will address the ongoing economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy.

Programs created in the law include:

- Tax credits to incentivize job creation and capital investment;
- Investment tools to support and strengthen New Jersey's innovation economy;

- Tax credits to strengthen New Jersey's communities including revitalization of brownfields and preservation of historic properties;
- Financial resources for small businesses, including those impacted by the COVID-19 pandemic;
- Support for new supermarkets and healthy food retailers in food desert communities;
- Additional tax credits for film and digital media.

The New Jersey Economic Development Authority is soliciting input from the public on the following draft rule amendments pertaining to implementation of the amended Offshore Wind Tax Credit Program.

PROGRAM OVERVIEW

The Offshore Wind Tax Credit Program provides tax credits for capital investment in a qualified wind energy facility located in New Jersey. The program is designed to spur employment growth and offshore wind supply chain development as a result of capital investment in land-based offshore wind industry projects.

In order to receive tax credits through the Offshore Wind Tax Credit Program, a business must:

- Must make or acquire capital investments totaling at least $50 million in a qualified wind energy facility. If the business is a tenant, the business must lease an area of the qualified wind energy facility that represents at least a $17.5 million capital investment in the facility.
- Meet new, full-time employee requirements. A tenant may meet the employment requirements with other tenants at the qualified wind energy facility.
- Demonstrate a net positive economic benefit to the State.

The calculation of new full-time employees may include select positions resulting from supply coordination agreements with equipment manufacturers, suppliers, installers, and operators associated with the supply chain required to support the qualified wind energy facility.

PROGRAM HISTORY

The Offshore Wind Economic Development Act, P.L. 2010, c. 51, as amended by P.L. 2018, c. 17, authorized the New Jersey Economic Development Authority (NJEDA) to approve up to $100 million in tax credits for the development of certain qualified wind energy facilities in wind energy zones.

On October 17, 2018 the Authority adopted special new rules to implement the program. These rules were subsequently readopted on October 17, 2019 following the completion of the standard rulemaking and comment process.

To learn more about the amended Offshore Wind Tax Credit Program, please visit https://www.njeda.com/era/#Programs and select "Offshore Wind Tax Credit."

ANTICIPATED PROGRAM MILESTONES

The Authority currently anticipates bringing proposed rule amendments and repeal for the Offshore Wind Tax Credit Program to its Board for consideration on May 12, 2021. If the Board approves the rule amendments and repeal, they will be published in the New Jersey Register for a 60-day public comment period.

The Authority may, at its discretion, accept applications based upon any draft rules approved for publication by its Board prior to the completion of the full Administrative Procedures Act process. However, all applicants will be subject to the requirements of the final adopted rules upon the conclusion of the formal comment process.

ECONOMIC RECOVERY ACT TRANSPARENCY WEBSITE

The NJEDA's Economic Recovery Act website (www.njeda.com/economicrecoveryact) allows members of the public to learn more about the programs included in the ERA and provide input on how the Authority will operationalize various aspects of its new incentive programs. The site also allows members of the public to share their thoughts on how NJEDA can make the programs more transparent.

This general feedback process precedes and is separate from the NJEDA's formal procedure to publish and adopt the rule amendments.

PUBLIC FEEDBACK: WRITTEN COMMENTS

Members of the public will also be able to submit feedback on the Offshore Wind Program though the NJEDA's Economic Recovery Act website (***https://www.njeda.com/economicrecoveryact/)*** between the following dates:

- **PUBLIC FEEDBACK OPEN**: April 22, 2021
- **PUBLIC FEEDBACK CLOSED**: April 29, 2021

We welcome constructive input on how to ensure new programs created through the Economic Recovery Act or programs amended by the Economic Recovery Act are structured and administered in a manner that drives opportunities for all residents and communities. Members of the public can do that by sending an email to offshorewindtaxcredit@njeda.com, or through the online portal on the NJEDA's website.

All feedback received through this process will be assessed and considered when preparing the final version of the rule amendments that is proposed by the Authority for Board approval. Following potential Board approval, there will be a 60-day period for formal public comment.

Please observe the following guidelines when submitting your feedback:

PLEASE DO:

- Reference a specific part of the rules by section and subsection when providing comments
- Share your feedback, relevant observations, and additional information.

- Keep comments brief and to the point.
- Use attachments to share more detailed or formal feedback.

PLEASE DO NOT:

- Include information that you do not want to be made public.
- Submit any information or other material protected by copyright without the permission of the copyright owner.
- Submit comments about topics unrelated to the Offshore Wind Program.

We may, at NJEDA's sole discretion, publish any, all, or a representative sample of comments in full or in part.

Do not include any information in your comment that you do not want to become public. Do not include any personally identifying or contact information if you do not want to be identified. (Providing optional contact information, however, will allow us to follow up with you if clarification is needed.) We will not accept or agree to a request to keep information confidential.

By submitting material, you grant to the NJEDA the non-exclusive, worldwide, transferable right and license to display, copy, publish, distribute, transmit, print, and use such information or other material in any way and in any medium, including but not limited to print or electronic form.

SUMMARY OF DRAFT RULES SECTIONS

The following summarizes the contents of each section of the proposed rule amendments and repeal to the Offshore Wind Tax Credit Program rules.:

N.J.A.C. 19:31-20.1 Applicability and scope – Addresses the statutory authority for the Offshore Wind Economic Development Tax Credit program promulgated by the New Jersey Economic Development Authority (the Authority) to implement section 6 of the Offshore Wind Economic Development Act, P.L. 2010, c. 57, as amended (the Act), which authorizes the Authority to approve up to $100 million, in tax credits for the development of qualified wind energy facilities in the State.

N.J.A.C. 19:31-20.2 Definitions – Defines certain terms used in this subchapter, clarifies statutory terms, and provides additional terms included in the implementation of the program.

N.J.A.C. 19:31-20.3 Eligibility criteria – – Outlines the criteria for a business to be eligible for tax credits, including requirements for capital investment and creation or retention of the minimum number of new, full-time employees, and that the business must demonstrate to the Authority that: 1) the proposed capital investment and the resultant retention and creation of eligible positions will yield a net positive economic benefit to the State; and, 2) the award of tax credits will be a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program.

N.J.A.C. 19:31-20.4 Restrictions – Provides for certain restrictions on program eligibility, such as the ineligibility for certain other incentives authorized pursuant to the "Municipal Rehabilitation and Economic Recovery Act," P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.).

N.J.A.C. 19:31-20.5 Application submission requirements – Establishes the information and procedures required for submitting an application to the Authority for tax credits under the program.

N.J.A.C. 19:31-20.6 Application and servicing fees – Establishes non-refundable application and other fees and acceptable modes of payment intended to assist the Authority in recouping the administrative costs in processing applications.

N.J.A.C. 19:31-20.7 Review of allocation and certification of project completion – Outlines the Authority's review process, which comprises a review to determine whether the company meets the net positive economic benefits test, eligibility requirements to the conditions listed for certification upon completion of the capital investment and employment requirements, and entails a Board determination and notification of the business and the Division of Taxation of the determination.

(a) (No change.)

N.J.A.C. 19:31-20.8 Tax credit certificate – These proposed rules would repeal this section, which includes general terms for a tax credit certificate, as those terms are now contained in the approval letter, based on the revised definition of "approval letter" in N.J.A.C. 19:31-2.

N.J.A.C. 19:31-20.9 Tax credit amount – Establishes the application and allocation of the tax credit for projects creating 300 or more new, full-time employees during the eligibility period, as well as for projects creating less than 300 new full-time employees and at least 150 new full-time employees at a qualified wind energy facility.

N.J.A.C. 19:31-20.10 Application for tax credit transfer certificate – Allows a business for a tax credit transfer certificate and the sale or assignment of the certificate, in full or in part, in an amount not less than $25,000 of tax credits to any other person that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5.

N.J.A.C. 19:31-20.11 Cap on total credits – No change proposed.

N.J.A.C. 19:31-20.12 Reduction and forfeiture of tax credits – Establishes provisions for the reduction, forfeiture, and recapture of tax credits in certain instances wherein a business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce, and wherein a business reduces the aggregate number of new, full-time employees employed at the qualified wind energy facility.

N.J.A.C. 19:31-20.13 Effect of sale or lease of qualified facilities – Requires that in the event a qualified business facility is sold, the new owner shall not acquire the capital investment of the seller and, except if the seller is an eligible small business, the seller shall forfeit all credits for the tax period in which the sale occurs, except for credits of a tenant which shall remain unaffected. The same restriction would apply to a tenant that subleases its tenancy to any sublessor tenant(s). Allows an eligible business to change the location of the qualified business facility prior to certification of capital investment under certain conditions.

N.J.A.C. 19:31-20.14 Amends the program's annual review reporting requirements.

N.J.A.C. 19:31-20.15 Appeals – N.J.A.C. 19:31-20.15(a) deletes the terms "on applications" as relates to the Board's action; and N.J.A.C. 19:31-20.15(b) inserts the term "effective" pertaining to the date of the Board's action.

FULL TEXT OF DRAFT RULES

The following is the draft proposed text of the amended Offshore Wind Tax Credit program rules provided for the purpose of receiving feedback from the public. The adopted rules for the original program may be accessed online via the Authority's website.

19:31-20.1 Applicability and scope

This subchapter is promulgated by the New Jersey Economic Development Authority (the Authority) to implement section 6 of the Offshore Wind Economic Development Act, P.L. 2010, c. 57, as amended (the Act), which authorizes the Authority to approve up to $100 million, except as may be increased by the Authority, in tax credits for the development of qualified wind energy facilities in [wind energy zones] **the State**.

19:31-20.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

…

"Approval letter" means the letter sent by the Authority that sets forth the conditions to maintain the approval and to receive the tax credit, the forecasted schedule for completion and occupancy of the project, the date the [10-year] eligibility period is scheduled to commence, the estimated amount of tax credits, **the process by which affiliates contributing employment or capital investment may be added, events that would trigger reduction and forfeiture, tax clearance certificate requirements,** and other such information that furthers the purposes of the Program. The approval letter will require the applicant to submit progress information by a certain date in order to preserve the approval of the tax credits **and to permit audit(s) of the business's payroll records, and any other evidence and documentation supporting the certifications pursuant to N.J.A.C. 19:31-20.7(f), the annual reports pursuant to N.J.A.C. 19:31-20.14, and the addition of affiliates, from time to time, as the Authority deems necessary**.

…

"Capital investment" in a qualified wind energy facility means expenses incurred for the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility, or improvement to real property, including associated soft costs**, provided soft costs shall not exceed 20 percent of all capital investment**. Capital investment includes obtaining and installing furnishings and machinery, apparatus, or equipment for the operation of a business in a building, structure, facility, or improvement to real property, site-related utility and transportation infrastructure improvements, plantings, or other environmental components required to attain the level of silver rating or above in the LEED(R) building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source including N.J.S.A. 52:27H-80 et seq. (The United

States Green Building Council has developed the Leadership in Energy & Environmental Design (LEED) Green Building Rating System for measuring the energy efficiency and environmental sustainability of buildings. The LEED Rating System is a third-party certification program and the nationally accepted benchmark for the design, construction, and operation of high performance buildings.) Vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement shall not constitute a capital investment. Also included is remediation of the qualified wind energy facility site, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. To be included, the capital investment must be commenced after August 19, 2010, the effective date of the Act. For purposes of this subchapter, "commenced" shall mean that the project consisting of construction of a new building shall not have progressed beyond site preparation; the project consisting of acquisition of an existing building shall not have closed title; and the project consisting of renovation or reconstruction of an existing building shall not have commenced construction.

"Commitment period" means the four-year period beginning on the same date as the eligibility period.

…

"Eligibility period" means the [10-year] **five-year** period in which a business may claim an offshore wind economic development tax credit, beginning with the tax period in which the Authority accepts the certification of the business that it has met the capital investment and employment qualifications of the Program.

…

"Full-time employee" means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, as determined by the Authority, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, as determined by the Authority, and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. A full-time employee is also a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as determined by the Authority as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business. "Full-time employee" shall not include an employee who is a resident of another state and whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., unless that state has entered into a reciprocity agreement with the

State of New Jersey[, provided that any employee whose work is provided pursuant to a collective bargaining agreement with a business in the wind energy zone may be included].

"Full-time employee at the qualified wind energy facility" means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time [in New Jersey] **at the facility**, or who spends any other period of time generally accepted by custom or practice as full-time employment in New Jersey, as determined by the Authority.

…

"Letter of compliance" means the letter issued annually by the Authority pursuant to N.J.A.C. 19:31-20.[14(d)]**13(e)** that must accompany the use of the tax credit certificate.

"Minimum number of new, full-time employees" means:

1. For the first year of the award, at least a cumulative 100 new, full-time employees compared to the number of full-time employees at the time of application;

2. For the second year of the award, for a privilege period or taxable year following the first year of the award, at least a cumulative 150 new, full-time employees compared to the number of full-time employees at the time of application;

3. For the third year of the award, for a privilege period or taxable year following the second year of the award, at least a cumulative 200 new full-time employees;

4. For the fourth year of the award, for a privilege period or taxable year following the third year of the award, at least a cumulative 300 new full-time employees.

…

"Project" means the employment and the capital investment in a qualified wind energy facility that is at least the employment and capital investment required by the Program [within a designated wind energy zone].

"Prorated minimum number of new full time employees" means for projects with less than 300 new full -time employees:

1. For the first year of the award, at least a cumulative 100 new, full-time employees compared to the number of full-time employees at the time of application;

2. For the second year of the award, for a privilege period or taxable year following the first year of the award, at least a cumulative 150 new, full-time employees compared to the number of full-time employees at the time of application;

3. For the third year of the award, for a privilege period or taxable year following the second year of the award, the lesser of 200 and the employee commitment as determined at approval, compared to the number of full-time employees at the time of application; and

4. For the fourth year of the award, for a privilege period or taxable year following the third year of the award, the employee commitment as determined at approval, compared to the number of full-time employees at the time of application.

"Qualified offshore wind project" means the same as the term is defined in section 3 of P.L. 1999, c. 23 (N.J.S.A. 48:3-51)**, which is a wind turbine electricity generation facility in the Atlantic Ocean and connected to the electric transmission system in this State, and includes the associated transmission-related interconnection facilities and equipment, and approved by the New Jersey Board of Public Utilities, or any successor entity, pursuant to section 3 of P.L. 2010, c. 57 (N.J.S.A. 48:3-87.1)**.

"Qualified wind energy facility" means any building, complex of buildings, or structural components of buildings, including water access infrastructure, and all machinery and equipment used in the manufacturing, assembly, development, or administration of component parts that support the development and operation of a qualified offshore wind project, or other wind energy project as determined by the Authority[, and that are located in a wind energy zone]. **To the extent a qualified wind energy facility requires improvements to existing non-wind facilities, only the improvements shall be part of the qualified wind energy facility.**

"Soft costs" means [all costs associated with financing, design, engineering, legal, real estate commissions, furniture, or office equipment with a useful life of less than five years, provided they do not exceed 20 percent of total capital investment] **all costs associated with financing, design, engineering, legal, or real estate commissions, including but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery but not including early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing, temporary signage, incentive consultant fees, Authority fees, loan interest payments, escrows, or other similar costs**.

…

["Wind energy zone" means property located in the South Jersey Port District established pursuant to The South Jersey Port Corporation Act, P.L. 1968, c. 60 (N.J.S.A. 12:11A-1 et seq.).]

19:31-20.3 Eligibility criteria

(a) In order to be eligible [to be considered] for an offshore wind economic development tax credit for a qualified wind energy facility:

1. If the business is other than a tenant, the business shall:

i. Make or acquire capital investments in a qualified wind energy facility totaling not less than $50,000,000. A business that acquires a qualified wind energy facility after August 19, 2010, the effective date of the Act, shall also be deemed to have acquired the capital investment made or acquired by the seller, subject to the disqualifications in N.J.A.C. 19:31-20.13. The capital investments of the owner shall include capital investments made by a tenant and may include any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant(s), but only to the extent necessary to meet the owner's minimum capital investment of $50,000,000 provided that the owner so [indicate] **indicates** in the owner's application or certification and further provided that such tenant allowance or tenant improvements meet the definition of capital investment;

ii. Employ, in the aggregate, with tenants at the qualified wind energy facility, not fewer than [300] **the minimum number of** new full-time employees at the qualified wind energy facility or through an equipment supply coordination agreement**, except that any business with not fewer than the prorated minimum number of new full-time employees will be eligible for a prorated award**; and

iii. Demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit in the amount required in (c) below; and

2. If the business is a tenant in a qualified wind energy facility:

i. The owner of the qualified wind energy facility shall make or acquire capital investments in the facility totaling not less than $50,000,000 [, as calculated] in accordance with (a)1i above;

ii. The tenant shall occupy a leased area of the qualified wind energy facility that represents at least $17,500,000 of the capital investment in the **qualified wind energy** facility, as calculated pursuant to (b) below;

iii. Employ, in the aggregate, with other tenants at the qualified wind energy facility, [at least 300] **the minimum number of** new full-time employees at the qualified wind energy facility or through an equipment supply coordination agreement**, except that any business with not fewer than the prorated minimum number of new full-time employees will be eligible for a prorated award**;

iv. The business shall lease **or own** the qualified wind energy facility for a term of not less than [10 years] **the commitment period**; and

v. Except for tenants of a qualified wind energy facility for which the owner has previously demonstrated a net positive **economic** benefit and received approval of the qualified **wind** energy facility or approval of tax credits, the business shall demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit in the amount required in (c) below. For purposes of this evaluation, the tenant may include the benefit derived from the owner's capital investment.

(b) (No change.)

(c) The net positive **economic** benefit required in (a)1iii and (a)2v above shall equal at least 110 percent of the approved tax credit allocation amount, to the State for the period equal to 75 percent of the useful life of the investment, not to exceed [10 years] **the commitment period**, provided that the Authority may determine, at its discretion, that the net positive economic benefit may extend to 20 years based on the length of the business's commitment to maintain the project at the qualified wind energy facility **and that the award of tax credits is subject to the recoupment provisions included in the approval letter**. To support the determination of a net positive **economic** benefit, the business shall submit to the Authority, prior to approval, a non-binding letter of intent executed between the Chief Executive Officer of the Authority and the chief executive officer, or equivalent officer for North American operations, of the business stating that the tax credits will yield a net positive economic benefit in the amount required in this subsection, taking into account the criteria listed at N.J.A.C. 19:31-20.7(c). **The letter of intent will also include a certification from the chief executive officer, or equivalent officer for North American operations, of the business that all factual representations made by the business to the Authority since the submission of the application are true under the penalty of perjury. The Authority may make the non-binding letter of intent public, unless the Authority determines that the interests of the State require confidentiality.**

(d)-(e) (No change.)

(f) A business shall be treated as owner of a qualified wind energy facility if it holds title to the facility **or** if it ground leases the land underlying the facility for at least 50 years.

(g) (No change.)

19:31-20.4 Restrictions

(a) A business shall not be [allowed] **awarded** offshore wind economic development tax credits if:

1.-2. (No change.)

(b) A business that is [allowed] **awarded** a tax credit under the Program shall not be eligible for incentives authorized pursuant to the "Municipal Rehabilitation and Economic Recovery Act," P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.).

(c)-(d) (No change.)

19:31-20.5 Application submission requirements

(a) Each application to the Authority made by a business that is an owner or tenant shall include the following information in an application format prescribed by the Authority:

1. Business information, including information on all affiliates contributing either full-time employees or capital investment or both to the project, shall include the following:

i.-xii. (No change.)

xiii. A list of all the development subsidies, as defined by P.L. 2007, c. 200, that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received. Examples of development subsidizes are tax benefits from programs authorized under P.L. 2004, c. 65, P.L. 1996, c. 26, and P.L. 2002, c. 43; **and**

[xiv. In the event that the business is a partnership and chooses to allocate the revenue realized from the sale of the tax credits other than as a proportion of the owners' distributive share of income or gain of the partnership, the business shall provide an agreement that sets forth the allocation among the owners. This agreement will be submitted to the Director of the Division of Taxation in the Department of the Treasury by such time and with such information as the Director may require; and]

[xv] **xiv**. Any other necessary and relevant information as determined by the Authority for a specific application.

2. Project information shall include the following:

i.-viii (No change.)

ix. The total number of anticipated new full-time positions that would be created in New Jersey**, for each of the years of the commitment period,** and **that would** occupy the qualified wind energy facility, and the total number of full-time employees that would occupy the qualified wind energy facility, and the distribution of such totals identified by business entity;

x.-xii. (No change.)

3.-4. (No change.)

(b)-(c) (No change.)

19:31-20.6 Application and servicing fees

[CURRENTLY UNDER CONSIDERATION - INTENTIONALLY LEFT BLANK FOR THE DRAFT RULE AMENDMENTS: Offshore Wind Economic Development Tax Credit Fee Structure]

19:31-20.7 Review of allocation and certification of project completion

(a) A business seeking an approval of tax credits for a qualified wind energy facility must apply for tax credits by July 1, [2024] **2025**, and a business shall submit its documentation for approval of its credit amount by July 1, [2027] **2028**.

(b) (No change.)

(c) In determining whether the company meets the net **positive** economic benefits test, as certified pursuant to N.J.A.C. 19:31-20.5(a)2iv, the Authority's consideration shall include, but not be limited to, the **direct benefits to the State, including** local [and State] taxes **that may**

benefit the State [paid directly by the business, property taxes, or payment in lieu of taxes paid directly by the business, and taxes paid directly by new employees]. The Authority [may] **shall** also consider **indirect benefits** [, at its discretion, local and State taxes generated indirectly by the business, property taxes or payment in lieu of taxes generated indirectly by the business, taxes generated indirectly by new employees, or peripheral economic growth] caused by the business's relocation to [the wind energy zone] **New Jersey, except, that the Authority will not consider indirect benefits if a business is including new full-time positions resulting from an equipment supply coordination agreement in the calculation of its new full-time employees** . **[**The Authority may increase the net economic benefit, at its discretion, if the business demonstrates to the Authority's satisfaction commitment(s) to contribute to non-financial community objectives.] The Authority may also consider taxes paid directly or generated indirectly by retained employees, at the Authority's discretion based on evidence satisfactory to the Authority that the employees are at risk of being lost to another state or country or eliminated**, and induced benefits derived from construction, provided that such**[. The] determination [shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority and] shall not include any capital investment or employees for which an incentive has been previously provided or any capital investment by a local or State governmental entity.

(d) Upon completion of the review of an application pursuant to (b) and (c) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application and the maximum amount of tax credits to be granted. The Board shall promptly notify the applicant and the Director of the Division of Taxation of the determination. The Board's award of the credits will be subject to conditions that must be met in order to maintain the approval and to receive the tax credits. An approval letter setting forth the conditions and indemnification and insurance requirements will be sent to the applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), that the project does not violate any environmental law requirements, and that the business agrees to extend the four-year statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax to the eligibility period. The approval letter shall also set forth a condition requiring the business to maintain the project at the qualified wind energy facility after the eligibility period to the extent the net positive economic benefit is calculated based on a period of years after the eligibility period pursuant to N.J.A.C. 19:31-20.3(c).

1. (No change.)

2. In the approval [notice] **letter** to the business, the Authority shall set a date by which its approval will expire.

(e) Within [six] **twelve** months following the date of application approval by the Authority, each approved business shall submit progress information indicating that the business has site plan approval, financing for, and site control of, the qualified wind energy facility**, except that projects consisting of new construction shall have twenty-four months**. Commencing with the date six months following the date of application approval, and every six months thereafter until completion of the project, each approved business shall submit an update of the status of the project to the Authority. Unless the Authority determines in its sole discretion that extenuating circumstances exist for extensions, the Authority's approval of the tax credits shall expire if the Authority does not timely receive the progress information or status update.

(f) Upon completion of the capital investment and employment requirements of the Program, the business shall submit a certification of a **qualified independent** certified public accountant and any receipts or verifiable documentation requested by the Authority, which may be made pursuant to an "agreed upon procedures" letter acceptable to the Authority evidencing that the business has satisfied the conditions relating to capital investment**,** [and] any employment requirements**, and other eligibility requirements**.

1. The certification with respect to the capital investment shall define the amount of the [tax credits] **capital investment** and shall not be increased regardless of additional capital investment in the qualified wind energy facility, provided; however, that in no event, will the amount of [tax credits] **capital investment** exceed the amount of [tax credits] **capital investment** previously approved by the Board. In the event the capital investment is reduced below the capital investment in the approval of the [incentive grant] **application**, the Authority may reevaluate the net positive economic benefit and reduce the size of the [grant] **award** accordingly. If the certification indicates that the capital investment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

2. The certification with respect to employment shall include the number of full-time employees and new full-time positions employed at the qualified wind energy facility, a copy of all equipment supply coordination agreements through which the business is meeting employment requirements under the Program, and the salary of all new full-time employees. To include a new full-time employee employed through an equipment supply coordination agreement, the business shall submit a certification from the company that is the other party to the equipment supply coordination agreement stating that its employees may be included by the business to meet the requirements of the Program, the number of new full-time employees employed through equipment supply coordination agreement, the number of hours worked by such employees pursuant to the equipment supply coordination agreement, and the salary of such employees. In the event the number of new full-time jobs or salaries in the certification is reduced below the number of new full-time jobs in the approval of the [incentive grant] **application** or the salaries proposed in the application, the Authority may reevaluate the net positive economic benefit and reduce the size of the [grant] **award** accordingly. If the certification indicates that the employment is less than the [minimum eligibility requirement] **number of new full-time employees for the first year of the award**, the business shall no longer be eligible for tax credits.

3. (No change.)

4. The Authority shall qualify certified public accountants and provide to the business the list of qualified certified public accountants; provided, the business may select an independent certified public accountant not on the Authority's list for purposes of the capital investment certification or the business's chief financial officer may certify for

purposes of the employment certification upon the Authority's prior approval if the business demonstrates an extenuating circumstance prohibiting the business from retaining a qualified independent certified public accountant, including, but not limited to, the unavailability of any of the qualified independent certified public accountants to timely complete the certification or none of the qualified certified public accountants are independent to the business.

[4]**5**. The certification shall be submitted to the Authority no later than three years after the Authority's application approval, unless the Authority determines in its sole discretion that there are extenuating circumstances for extensions, but in no event later than July 1, [2027] **2028**.

[5]**6**. The Authority may seek additional information from the business and/or information from the Department of Labor and Workforce Development to support the certification.

(g) Once the Authority accepts the timely certification of the business that it has satisfied the capital investment**,** [and] employment**, and any other eligibility** requirements of the Program, and the Authority determines that [other] **all** necessary conditions have been met, the Authority shall notify the business and notify the Director of the Division of Taxation, and the business shall receive its tax credit certificate. The use of the tax credit certificate shall be subject to the receipt of an annual letter of compliance.

19:31-20.8 Tax credit certificate [TO BE REPEALED]

19:31-20.9 Tax credit amount; application and allocation of the tax credit

(a) The amount of the credit [allowed] **awarded** pursuant to the Program **for projects creating 300 or more new full-time employees during the eligibility period** shall, except as otherwise provided, be equal to the capital investment **previously approved by the Board and** made by the business, or the capital investment represented by the business' leased area, or area owned by the business as a condominium, except as may be limited by the net positive economic benefits test and shall be taken over the eligibility period, at the rate of [one-tenth] **one-fifth** of the total amount of the business' credit for each tax accounting or privilege period of the business, beginning with the tax period in which the business is first approved by the Authority as having met the investment capital**,** [and] employment [qualifications], **and any other eligibility requirements**, subject to any reduction or disqualification provided in P.L. 2018, c. 17 and this subchapter as determined by annual review by the Authority. **The amount of the credit allowed pursuant to the Program for projects creating less than 300 new full-time employees and at least 150 new full-time employees shall, except as otherwise provided, be equal to the following percentage of the capital investment:**

1. 50 percent of the capital investment for projects creating 150 new full-time employees and less than 200 new, full-time employees.

2. 65 percent of the capital investment for projects creating 200 new full-time employees and less than 250 new full-time employees.

3. 85 percent of the capital investment for projects creating 250 new full-time employees and less than 300 new full-time employees.

(b) In no event shall the amount of tax credits exceed the amount of tax credits previously approved by Board as follows:

1. If the owner uses space in a qualified wind energy facility, in order to determine the amount of the owner's capital investment that will be attributed toward the amount of its tax credit, the Authority shall multiply the owner's capital investment by a fraction, the numerator of which is the net leaseable area of the qualified [business] **wind energy** facility not leased to tenants and the denominator of which is the total net leaseable area.

2. (No change.)

(c) The business may apply the credit against its corporation business tax or insurance premiums tax otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5. The credit awarded to the business using one or more affiliates to satisfy the employment and/or capital investment requirements of the Program shall be applied on the basis of the allocation(s) submitted pursuant to the application, or as subsequently adjusted pursuant to N.J.A.C. 19:31-20.14 provided, however, that any affiliate that receives an allocation must have contributed either capital investments to the **qualified** wind energy facility or employees at the [business] **qualified wind energy** facility during the tax period for which the tax credits are issued.

(d) The amount of credit [allowed] **awarded** for a tax period to a business that is a tenant in a qualified business facility shall not exceed the business's total lease payments for occupancy for the tax period.

(e) A business that is a partnership shall not be [allowed] **awarded** a credit under the Program directly, but the amount of credit of an owner of a business shall be determined by allocating to each owner of the partnership that proportion of the credit of the business that is equal to the owner of the partnership's share, whether or not distributed, of the total distributive income or gain of the partnership for its tax period ending within or at the end of the owner's tax period, or that proportion that is allocated by an agreement, if any, among the owners of the partnership that has been provided to the Director of the Division of Taxation in the Department of the Treasury by the time and accompanied by the additional information as the Director may require.

(f)-(g) (No change.)

19:31-20.10 Application for tax credit transfer certificate

(a) A business may apply to the Director of the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority for a tax credit transfer certificate covering one or more years, in lieu of the business being allowed any amount of the credit against the tax liability of the business. Such application shall identify the specific tax credits to be sold. Once approved by the Authority and the Director of the Division of Taxation, a certificate shall be issued. The certificate, upon receipt thereof by the business from the Director and the Authority, may be sold or assigned, in full or in part, in an amount not less than $25,000 of tax credits to any other person that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5. The certificate provided to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credit by the business that originally applied for and was [allowed] **awarded** the credit.

(b)-(e) (No change.)

19:31-20.11 Cap on total credits

(a) (No change.)

19:31-20.12 Reduction and forfeiture of tax credits

(a) If, in any tax period **during the commitment period**, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax accounting or privilege period prior to the credit amount approval under the Program, then the business shall forfeit its credit amount for that tax period and each subsequent tax period until the first tax period for which documentation demonstrating the restoration of the business's Statewide workforce to the threshold levels required by this section has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed. For purposes of this section, "business" shall include any affiliate that has contributed to the capital investment, received the tax credit or contributed to the required full-time employees at the qualified wind energy facility. The number of full-time employees in a business's Statewide workforce shall not include a new full-time employee at the qualified wind energy facility.

(b) If, in any tax period **during the commitment period**, the aggregate number of new full-time employees at the qualified wind energy facility and resulting from an equipment supply coordination agreement drops below [300] **the minimum number of new full-time employees or prorated minimum number of new full time employees, as applicable,** then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period of which documentation demonstrating the restoration of the number of **new** full-time employees employed at the qualified wind energy facility and resulting from an equipment supply coordination agreement to [300] **the minimum number of new full-time employees**, **or prorated minimum number of new full-time employees, as applicable, has been reviewed and approved by the Authority,** for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed.

(c) (No change.)

(d) In the event that any certification required from the business or the other party to any equipment supply coordination agreement, including, but not limited to, the certifications required pursuant to N.J.A.C. 19:31-20.14(a)2, is found to be willfully false or that the business submitted false or misleading information or failed to submit relevant information in the application or any other submission to the Authority or the Division of Taxation, the Authority may, at its sole discretion and in addition to any other remedies available, revoke and/or terminate any award of tax credits in their entirety and may [require repayment of] **recapture** all **or a portion of the** tax credits received by the business.

(e) **For projects with a commitment pursuant to N.J.A.C. 19:31-20.3(c) to maintain the project at the qualified wind energy facility after the commitment period, the [**The] Authority may recoup all or a portion of the tax credits awarded if the business does not maintain the project at the qualified wind energy facility for the period of years after the [eligibility] **commitment** period [that was included in the calculation of the net positive economic benefit pursuant to N.J.A.C. 19:31-20.3(c)] **based on a recoupment schedule in the approval letter**.

19:31-20.13 Effect of sale or lease of qualified facilities

(a) The tax credit amount shall be forfeited in the event of sale of the qualified wind energy facility or **lease or** sublease of the business's tenancy as follows:

1. If the qualified wind energy facility is sold **or leased** in whole or in part during the eligibility period, the new owner **or tenant** shall not acquire the capital investment of the seller **or landlord** and the seller **or landlord** shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, except that any credits of tenants shall remain unaffected. The new owner **or lessee** may not apply for tax credits based upon the seller's **or landlord's** capital investment. If the business merges with or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner.

2. (No change.)

19:31-20.14 Annual review reporting requirements; letter of compliance

(a) After notification pursuant to N.J.A.C. 19:31-20.7(g), the business shall furnish to the Authority an annual review report [certified by a certified public accountant] in a format as may be determined by the Authority, which shall contain the following information:

1. **A certification, which may be made pursuant to an agreed upon procedures letter acceptable to the Authority, of a qualified independent certified public accountant, which shall be qualified by the Authority pursuant to N.J.A.C. 19:31-20.7(f)4, containing the** [The] number of full-time employees and new full-time positions employed at the qualified wind energy facility, a copy of all equipment supply coordination agreements through which the business is meeting employment requirements under the Program, the salary of all new full-time employees, the number in the business's Statewide employment, total lease payments, the list of

affiliates that contributed to the full-time employees at the qualified wind energy facility, the number of full-time employees in New Jersey in the last tax period prior to the credit amount approval of any affiliate that contributed to the full-time employees and was not listed in the application, and information on any change or anticipated change in the identity of the entities comprising the business elected to claim all or a portion of the credit. To include a new full-time employee employed through an equipment supply coordination agreement, the business shall submit a certification from the company that is the other party to the equipment supply coordination agreement stating that its employees may be included by the business to meet the requirements of the Program, the number of new full-time employees employed through equipment supply coordination agreement, the number of hours worked by such employees pursuant to the equipment supply coordination agreement, and the salary of such employees. In the event the number of new full-time jobs at the qualified wind energy facility or resulting from an equipment supply coordination **agreement** or salaries of these jobs in the annual review report is reduced below 10 percent or more of the number of new full-time jobs or salaries in the annual review report of the prior year or the [independent] certification **pursuant to N.J.A.C. 19:31-20.7(f)** if the annual review report is the first, the Authority may reevaluate the net positive economic benefit and reduce the size of the [grant] **award** accordingly. If, in a tax period subsequent to a reduction in the size of the grant the business increases the number of new full-time jobs at the qualified wind energy facility or resulting from an equipment supply coordination **agreement** or salaries of these jobs in the annual review report above 10 percent or more of the number of new full-time jobs or salaries in the annual review report of the prior year, the Authority may reevaluate the net positive economic benefit and increase the size of the [grant] **award** accordingly, but in no event shall the amount of tax credit that the business may [apply] **take** in a tax period be greater than [one-tenth] **one-fifth** of the total tax credit amount approved by the Authority. [In the event the number of new full-time jobs at the qualified wind energy facility or resulting from an equipment supply coordination or salaries of these jobs in the annual review report is reduced below 10 percent or more of the number of new full-time jobs or salaries in the annual review report of the prior year or the independent certification if the annual review report is the first, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly.] This reduction shall not affect any forfeiture under N.J.A.C. 19:31-20.12.

2. A certification indicating whether or not the business is aware of any condition, event, or act that would cause the business not to be in compliance with the approval **letter**, P.L. 2007, c. 346 or this subchapter.

(b) (No change.)

(c) The [tax credit certificate] **approval letter** may provide for additional reporting requirements.

(d)-(e) (No change.)

19:31-20.15 Appeals

(a) The Board's action [on applications] shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 calendar days from the **effective** date of the Board's action, an explanation as to how the applicant has met the Program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., or 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) (No change.)