

## OTHER AGENCIES

### (a)

#### NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

##### Authority Assistance Programs

##### Garden State Film and Digital Media Jobs Program

##### Proposed Amendments: N.J.A.C. 19:31-21.1 through 21.10

##### Proposed New Rules: N.J.A.C. 19:31-21.8, 21.9, and 21.13

Authorized By: New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Authority: P.L. 2019, c. 506; P.L. 2020, c. 156; P.L. 2021, c. 160; and P.L. 2021, c. 367.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2022-098.

Submit written comments by September 30, 2022, to:

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The agency proposal follows:

#### Summary

The Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56 (N.J.S.A. 54:10A-5.39b and 54A:4-12b), provides a transferable credit against the corporation business tax and the gross income tax for qualified expenses incurred for the production of certain film and digital media content in New Jersey. The goal of the program is to incentivize production companies to film and create digital media content in New Jersey.

The New Jersey Economic Development Authority ("NJEDA" or "Authority") is proposing amendments to the existing rules and new rules to incorporate provisions of recent statutory revisions, pursuant to the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156 (as amended by P.L. 2021, c. 160); as well as P.L. 2019, c. 506, and P.L. 2021, c. 367.

The Film and Digital Media Tax Credit Program encourages the production of film and digital media content in the State. The program makes available \$100,000,000 in annual allocation for films and \$30,000,000 annual allocation for digital media projects.

To be eligible for the production of a film, the film project must be a feature film, a television series, or a television show of 22 minutes or more in length, intended for a national viewing audience; or a television series or a television show of 22 minutes or more in length intended for a national or regional viewing audience, including, but not limited to, a game show, award show, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. The film project must meet one of the following eligibility criteria:

1. At least 60 percent of the total film production expenses (exclusive of post-production costs) must be incurred for services and goods purchased through vendors authorized to do business in New Jersey; or
2. Qualified film production expenses (expenses incurred in New Jersey for the production of a film) must exceed one million dollars per production for a single privilege period for goods and services purchased through vendors authorized to do business in New Jersey.

Productions featuring news, current events, weather, market reports, public programming, talk shows, sports events, or reality shows; productions that solicit funds; productions containing obscene material, as defined at N.J.S.A. 2C:34-2 and 2C:34-3; and productions primarily for private, industrial, corporate, or institutional purposes are not eligible for film tax credits.

To be eligible for the production of digital media content, the production must meet both eligibility thresholds below:

1. At least two million dollars of the total digital media production expenses must be incurred for services performed, and goods purchased, through vendors authorized to do business in New Jersey; and
2. Fifty percent of the qualified digital media production expenses must be incurred for wages and salaries paid to full-time employees in New Jersey.

For film projects, the available tax credit is based on the qualified film production expenses incurred in New Jersey. The tax credit is 35 percent of all qualified film production expenses, including labor; except that the tax credit is reduced to 30 percent for all qualified film production expenses for goods and services incurred for use within the 30-mile radius of Columbus Circle, New York City. Expenses for advertising, promotional materials, and wage and salary payments, in excess of \$500,000 per person, are not eligible under the program. Additionally, all qualifying wage and salary payments are subject to a 6.37 percent withholding requirement, including payments made to independent contractors and loan out companies.

For digital media projects, the available tax credit is based on the qualified digital media production expenses incurred in New Jersey. The credit is 30 percent of all qualified digital media production expenses, with an increase to 35 percent for all qualified digital media production expenses, for goods and services, incurred through vendors authorized to transact business in New Jersey, who have a primary business location in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem Counties.

For both film and digital media projects, there is an available bonus of two percent for productions that exhibit satisfactory evidence of a commitment to prioritizing hiring minority and women employees across all levels of the production. Eligible productions that make additional commitments for hiring certain local on-screen talent from underrepresented ethnic groups may receive an additional two percent bonus.

To encourage the development of large, long-term, studio facilities, two additional and separate allocation designations were created by the Economic Recovery Act of 2020, for studio partners and film-lease partners. Studio partners are a designated production company that has made the commitment to produce films or commercial audiovisual products in New Jersey, and occupy a production facility of at least 250,000 square feet, for a period of at least 10 years. Film-lease partners are an Authority-designated production company that has made a commitment to lease or acquire a production facility of at least 50,000 square feet, for a period of five to 10 successive years, and commits to spend an annual average of \$50,000,000 in qualified film production expenses during that period.

Studio partners and film-lease partners will first apply to the Authority to be designated, and once designated, submit subsequent applications for each film project produced in New Jersey thereafter. There are three designations available for studio partners; designations will be made on a first-in-time basis. However, in circumstances where interest in the studio partner designation is expected to surpass available designations, the Authority may, at its discretion and upon notice, institute a competitive application process whereby all completed applications submitted by a date certain will be evaluated. There are no restrictions on the number of production companies that can receive the film-lease partners designation.

The tax-credit percentage for studio and film-lease partners is calculated the same as the legacy program; however, studio and film-lease partners benefit from a separate approval queue and separate annual allocation of \$100,000,000 for each designation. Above-the-line (ATL) wages and salaries are still capped at \$500,000, per person, for film-lease partners. Depending on the amount of qualified film production expenses involved in the project, a studio partner is able to capture additional wage and salary expenses as follows:

- A studio partner that incurs \$15 million, but less than \$50 million, in qualified film production expenses can include up to \$15 million in ATL wage and salary expenses, as qualified per project;
- A studio partner that incurs \$50 million or more, but less than \$100 million, in qualified film production expenses can include up to \$25 million in ATL wage and salary expenses, as qualified per project;

- A studio partner that incurs \$100 million or more, but less than \$150 million, in qualified film production expenses can include up to \$40 million in ATL wage and salary expenses, as qualified per project; and
- A studio partner that incurs \$150 million or more in qualified film production expenses can include up to \$60 million in ATL wage and salary expenses, as qualified per project.

The initial NJEDA Board approval for film and digital media production applications will set a not to exceed amount of tax credits available for the project. Once the film or digital media project is completed, the applicant will submit a final certification of expenses through a qualified, independent, certified public accountant in accordance with the procedures on the Authority's website. Once the final certification is reviewed and approved, it will be sent to the Division of Taxation for review, and ultimate issuance of the tax credit.

The tax credits awarded through the Film and Digital Media Tax Credit Program can be used to offset either corporate-business tax or gross-income tax and can be transferred to another taxpayer for no less than 75 percent of their value. The amount of the credit allowed may be carried forward to the seven tax years following the tax year the credit was initially allowed.

Beginning in State Fiscal Year 2025, in addition to the \$100,000,000 made available for studio partners annually, the Authority may make an additional \$350,000,000 available to studio partner projects. In addition to the \$100,000,000 made available annually to film-lease partners, the Authority may make available an additional \$100,000,000 for film-lease projects.

In any State fiscal year where there are any unused or unredeemed tax credits, the Authority will certify the amount of the excess, and carry it forward to the subsequent fiscal year. Unused, or unredeemed, tax credits for studio partners and digital media projects shall be carried forward only into the subsequent allocation for those specific categories. The unused or unredeemed amount of tax credits for legacy film and film-lease partners may be allocated between the categories at the Authorities discretion.

The following summarizes the contents of the proposed amendments and new rules implementing the Garden State Film and Digital Media Jobs Program (Program).

#### **N.J.A.C. 19:31-21.1 Applicability and Scope**

The proposed amendments revise the referenced section to include citations for statutory revisions to the Garden State Film and Digital Media Jobs Act, pursuant to P.L. 2019, c. 506; P.L. 2020, c. 156; P.L. 2021, c. 160; and P.L. 2021, c. 367.

#### **N.J.A.C. 19:31-21.2 Definitions**

The proposed amendments define certain new terms used in this subchapter, and incorporate terms defined at P.L. 2020, c. 156; P.L. 2021, c. 160; and P.L. 2021, c. 367, pertaining to the Program. Specifically, the following terms are clarified to support the implementation of the Program: "Commission," "digital media content," "film," "loan out company," "primary place of business," "qualified digital media content production expenses," "qualified film production expenses," "total digital media content production expenses," and "total film production expenses." The proposed amendments also create additional terms to support the implementation of the Program, including: "annual average of qualified film production expense," "commitment period," "film-lease partner" or "New Jersey film-lease partner," "incurred in New Jersey," "production facility," "reality show," and "studio partner" or "New Jersey studio partner."

#### **N.J.A.C. 19:31-21.3 Eligibility Criteria**

N.J.A.C. 19:31-21.3, which outlines the criteria for a taxpayer to be eligible for the Program for film and digital media tax credits, is revised as follows:

N.J.A.C. 19:31-21.3(a) is revised to clarify a taxpayer, including a studio partner, a film-lease partner, and/or a member of a studio partners' or film-lease partner's combined group, may be eligible for film tax credits.

The proposed amendments at N.J.A.C. 19:31-21.3(a)1 delete "one taxable year," which is replaced with "the privilege period for services performed, and goods purchased, through vendors authorized to do

business in New Jersey, including wages and salaries," in regard to the time period in which certain total film production expenses shall be incurred.

The proposed amendments at N.J.A.C. 19:31-21.3(a)2 delete "the earlier of" and the provision "or 150 days from the date of the initial approval of the application," in regard to the period under which principal photography of the film shall commence to 180 days from the date of the completed application for the tax credit.

The proposed amendments at N.J.A.C. 19:31-21.3(a)4 and (b)1iii add "qualified" to independent certified public accountant.

Proposed new N.J.A.C. 19:31-21.3(d), (e), and (f) establish eligibility requirements for any taxpayer applying to be designated as a studio partner or a film-lease partner, or to produce a reality show, respectively.

Proposed new N.J.A.C. 19:31-21.3(g) requires that, for two or more buildings to qualify as a production facility, the buildings must be proximate to each other and shall include, but not be limited to, buildings that are adjacent to each other, or across a single right-of-way from each other.

#### **N.J.A.C. 19:31-21.4 Application Submission Requirements**

The proposed amendments at N.J.A.C. 19:31-21.4(a)4, regarding a breakout of project-certain-projected costs required for a completed application for film tax credits, revise a cross-reference; and specify that for applications filed, on or after, the effective date of P.L. 2021, c. 160, January 7, 2021, a breakout of projected certain costs shall be provided for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York.

N.J.A.C. 19:31-21.4(a)8 is deleted, in light of the proposed amendments to "qualified film production expenses."

The proposed amendment at recodified N.J.A.C. 19:31-21.4(a)9 includes a reference to the increased bonus amount of tax credits, pursuant to N.J.A.C. 19:31-21.6(l)1i, ii, and iii.

The proposed amendments at recodified N.J.A.C. 19:31-21.4(a)10, pertaining to a film production that involves an eligible reality show, require an executed letter of interest, lease, sublease, or deed.

Proposed new N.J.A.C. 19:31-21.4(a)11 provides that, for purposes of a completed application, written verification shall be provided, if applicable, that the applicant is a member of a studio partner's or a film-lease partner's combined group.

Proposed new N.J.A.C. 19:31-21.4(b) sets forth the requirements for a completed application to be designated as a studio partner, including an executed deed, executed lease or sublease for at least 10 years, or purchase contract for the production facility; detailed floorplan, indicating the uses of each area of the production facility; site plan approval for the production facility; evidence that the applicant has made a commitment to produce films or commercial audiovisual products in New Jersey; preliminary site plan approval for the production facility or an adopted redevelopment plan or executed redevelopment agreement; and any other necessary and relevant information, as determined by the Authority for a specific application.

Proposed new N.J.A.C. 19:31-21.4(c) sets forth the requirements for a completed application to be designated as a film-lease partner, including an executed letter of interest, lease, sublease, deed, or purchase contract for the production facility; a detailed floorplan, indicating the uses of each area of the production facility; a narrative detailing how the taxpayer will meet the minimum annual average of qualified film production expense requirement; information on all production projects, known or anticipated, for the commitment period, including, but not be limited to, production names, estimated project dates, and estimated qualified film production expenses; financial information demonstrating the taxpayer's ability to meet the minimum annual average of qualified film production expenses as described in the definition of a film; and any other necessary and relevant information, as determined by the Authority for a specific application.

Recodified N.J.A.C. 19:31-21.4(d), pertaining to a completed application for digital media tax credits, is revised at N.J.A.C. 19:31-21.4(d)1 to also require a breakout of qualified digital media expenses for

services performed and tangible personal property purchased through a vendor with a primary place of business located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem Counties. The proposed amendment at N.J.A.C. 19:31-21.4(d)5 would include reference to the increased bonus amount of tax credits pursuant to N.J.A.C. 19:31-21.6(l)2i, ii, and iii.

Finally, as referenced above, N.J.A.C. 19:31-21.7(f) is proposed for deletion and new appeal provisions are included as proposed new N.J.A.C. 19:31-21.13.

#### **N.J.A.C. 19:31-21.5 Fees**

The proposed amendments at N.J.A.C. 19:31-21.5(a)1 through 7 add additional tiers to the non-refundable application fee scale, based on the total amount of qualified film production expenses.

Proposed new N.J.A.C. 19:31-21.5(b)1 through 7 provide for a non-refundable approval fee based on the amount of qualified film production expenses for a project.

The proposed amendments at recodified N.J.A.C. 19:31-21.5(c)1 through 5 replace the percentage-based issuance fee with a flat fee based on the amount of qualified film production expenses for a project.

Proposed new N.J.A.C. 19:31-21.5(d)1 and 2 amend the fee amount for a tax credit transfer application based on the amount of qualified film production expenses for a project.

Proposed new N.J.A.C. 19:31-21.5(e) provides for a non-refundable annual fee for film-lease partners.

Proposed new N.J.A.C. 19:31-21.5(f) provides for a non-refundable fee for extensions of deadlines for the submission of a temporary certificate of occupancy for studio partners.

#### **N.J.A.C. 19:31-21.6 Tax Credit Amounts; Bonus Amount; Carryforward of Tax Credits**

The proposed amendments at N.J.A.C. 19:31-21.6(a) and new paragraph (a)1 set forth that, for applications received prior to July 2, 2021 (the effective date of P.L. 2021, c. 160), an applicant may receive a tax credit of 35 percent of the qualified film production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem Counties.

Proposed new N.J.A.C. 19:31-21.6(a)2 sets forth that, for applications received on or after July 2, 2021 (the effective date of P.L. 2021, c. 160), an applicant may receive a tax credit of 30 percent of the qualified film production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York.

The proposed amendment at N.J.A.C. 19:31-21.6(a)3 revises the amount of film tax credits allowed applications based on date of application. For applications received prior to January 7, 2021, the effective date of P.L. 2020, c. 156, an applicant may receive a tax credit of 30 percent of the qualified film production expenses of the taxpayer.

Proposed new N.J.A.C. 19:31-21.6(a)4 revises the amount of film tax credits allowed applications based on date of application. For applications received on or after January 7, 2021, the effective date of P.L. 2020, c. 156, an applicant may receive a tax of 35 percent of the qualified film production expenses of the taxpayer.

The proposed amendments at N.J.A.C. 19:31-21.6(b)1 revise the amount of digital media tax credits allowed for certain applications based on date of application—prior to the effective date of P.L. 2021, c. 367 (January 12, 2022)—to a tax credit of 25 percent of the qualified digital media content production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem Counties and 20 percent of qualified expenses not included at N.J.A.C. 19:31-21.6(b)1i and the time period during which the tax credit may be applied for a privilege period

or taxable year commencing on or after July 1, 2018, but before 2034, rather than 2023.

The proposed amendments at N.J.A.C. 19:31-21.6(b)2 revise the amount of digital media tax credits allowed for certain applications based on date of application—on or after the effective date of P.L. 2021, c. 367 (January 12, 2022)—to a tax credit of 35 percent of the qualified digital media content production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem Counties and 30 percent of qualified expenses not included at N.J.A.C. 19:31-21.6(b)1i and the time period during which the tax credit may be applied for a privilege period or taxable year commencing on or after July 1, 2018, but before 2034, rather than 2023.

The proposed amendments at N.J.A.C. 19:31-21.6(l) add cross-references to N.J.A.C. 19:31-21.6(b), as well as subsection (a).

The proposed amendments at N.J.A.C. 19:31-21.6(l)1 clarify that a taxpayer shall be allowed an increase in the tax credit against the tax imposed, pursuant to N.J.S.A. 54:10A-5 or pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., based on a diversity plan.

Proposed new N.J.A.C. 19:31-21.6(l)2 provides for an increase in the amount of a tax credit allowed to four percent of the qualified film or digital media content production expenses, if the diversity plan, in addition to meeting the requirements at N.J.A.C. 19:31-21.6(l)1, also outlines specific goals that include hiring certain persons, as credited performers, in the film or digital media production, as set forth at N.J.A.C. 19:31-21.6(l)2i, ii, and iii.

#### **N.J.A.C. 19:31-21.7 Evaluation Process for Tax Credits; Initial Approval for Tax Credits, Award of Tax Credits**

The proposed amendments revise the heading for the section to add “for tax credits,” following the reference to evaluation process, and delete “appeals,” as the provisions for appeals at existing subsection (f) is deleted and relocated to proposed new N.J.A.C. 19:31-21.13.

N.J.A.C. 19:31-21.7(a) is revised to clarify that the subsection applies to applications for film tax credits, which shall be submitted to the Authority and Commission for review for content eligibility.

Proposed newly codified N.J.A.C. 19:31-21.7(a)1 is amended to refer to the proposed cap on total credits found at N.J.A.C. 19:31-21.11, rather than list the caps at this paragraph.

Proposed newly codified N.J.A.C. 19:31-21.7(a)2 adds a new provision that, to assist the Authority in designating the maximum amount of the credit, the Authority may employ an independent consultant, at the cost of the applicant, to review the initial budget submitted by the applicant to determine if the qualified film or digital media expenses are within reasonable industry standards. In addition, for projects submitted by studio partners and film-lease partners, the initial approval letter shall include a condition that the Authority’s approval of the final documentation shall require the taxpayer remain a studio partner.

The proposed amendment at N.J.A.C. 19:31-21.7(c)1 deletes “or 150 days from the date of initial approval by the Authority.”

N.J.A.C. 19:31-21.7(c)2, which sets forth the documentation required to be reviewed and evaluated for total film production expenses and total digital media content production expenses, is revised to clarify that the report shall be prepared by a “qualified” independent certified public accountant, as described at subsection (d).

Proposed new N.J.A.C. 19:31-21.7(c)2i specifies the total and qualified film production expenses or the total and qualified digital media content production expenses of the taxpayer to be included in the qualified independent certified public accountant report.

Proposed new N.J.A.C. 19:31-21.7(c)2ii provides that the taxpayer’s qualified film production expenses and digital media content production expenses shall be adjusted based upon any discrepancies identified for the reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, and qualified wages. The taxpayer’s qualified film production expenses and digital media content production expenses shall also be adjusted based on the projection of any discrepancies identified based upon the review of

randomly selected expense items or wages in each strata pursuant to N.J.A.C. 19:31-21.7(c), to the extent that the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages in each strata.

Proposed newly codified N.J.A.C. 19:31-21.7(c)2iii is amended to change the requirement of a "certification" to a "report."

Proposed new N.J.A.C. 19:31-21.7(c)3 provides that for taxpayers that received initial approval for the production of a reality show, the certified public accountant report described at N.J.A.C. 19:31-21.7(c)2, shall include verification of the actual capital investment in the production facility. If the capital investment in the report is less than the minimum eligibility requirement in the definition of film, the taxpayer shall no longer be eligible for tax credits for the production. The taxpayer shall also provide the temporary certificate of occupancy; a detailed floorplan, indicating the uses of each area of the production facility; and an executed deed, lease, or sublease evidencing site control. If the taxpayer is a tenant and the lease or sublease has a term, including renewals and options, of less than the minimum eligibility requirement in the definition of film, the taxpayer shall no longer be eligible for tax credits for the production.

Existing N.J.A.C. 19:31-21.7(c)5 is deleted pursuant to P.L. 2020, c. 156 (as amended by P.L. 2021, c. 160); and P.L. 2019, c. 506, and P.L. 2021, c. 367.

Recodified N.J.A.C. 19:31-21.7(c)5 adds a cross-reference to N.J.A.C. 19:31-21.6(l)2.

Proposed new N.J.A.C. 19:31-21.7(c)6 requires a certification from the taxpayer that the information provided pursuant to N.J.A.C. 19:31-21.7(c) is true under the penalty of perjury.

Proposed new N.J.A.C. 19:31-21.7(d) provides that the Authority shall qualify certified public accountants and provide to the taxpayer the list of qualified certified public accountants. The taxpayer may select a certified public accountant that is independent to the taxpayer and not on the Authority's list of qualified certified public accountants for the purposes of the report upon the Authority's prior approval if the taxpayer demonstrates certain extenuating circumstances prohibiting the taxpayer from retaining a qualified certified public accountant.

Recodified N.J.A.C. 19:31-21.7(e) is proposed for amendment to add "qualified" to independent certified public accountant certification.

N.J.A.C. 19:31-21.7(f) is proposed for deletion and the substance is relocated as proposed new N.J.A.C. 19:31-21.13.

Proposed new N.J.A.C. 19:31-21.7(g) provides that, for film tax credit applications submitted by film-lease partners and studio partners, upon request, the Authority may provide a non-binding, administrative pre-certification approval letter contingent on Board approval.

The proposed amendments, at N.J.A.C. 19:31-21.7(g), add "completed" to application for designation as a studio partner.

#### **N.J.A.C. 19:31-21.8 Evaluation Process for Designation of Studio Partner or Film-Lease Partner; Initial Approval; Annual Reports**

Proposed new N.J.A.C. 19:31-21.8 establishes the process for application and designation as a studio partner or film-lease partner; requires execution of an award agreement; and imposes certain compliance and reporting requirements for a taxpayer designated as studio partner or film-lease partner. Proposed new N.J.A.C. 19:31-21.8(a) sets forth that an application for designation as a studio partner or film-lease partner shall be submitted to the Authority. Proposed new N.J.A.C. 19:31-21.8(b) sets forth how applications will be considered and the potential for the institution of a competitive application process. Proposed new N.J.A.C. 19:31-21.8(c) sets forth that a completed application for designation as a film-lease partner shall be considered for approval on a first-in-time basis.

Proposed new N.J.A.C. 19:31-21.8(d) sets forth that the Authority may employ an independent consultant to review the plan submitted by the applicant for the feasibility of the projected qualified film production expenses. Proposed new N.J.A.C. 19:31-21.8(e) sets forth the expiration(s) of the designation of studio partner or film lease partner at the end of the commitment period and the requirement that the taxpayer execute, and abide by the conditions of, an approval letter.

Proposed new N.J.A.C. 19:31-21.8(e)1, 2, 3, and 4 set forth the conditions of the approval including, but not limited to, submission of

periodic progress reports; committed financing, if applicable; site plan approval, if applicable; evidence of final site control of the production facility; final floorplan indicating the uses of each area; and the temporary certificate of occupancy. The proposed new paragraphs also set forth the timeframe for submittal of the temporary certificate of occupancy and expiration of the time period as set forth at N.J.A.C. 19:31-21.8(e).

Proposed new N.J.A.C. 19:31-21.8(f) sets forth that the award agreement shall be executed by a studio partner and shall include, but not be limited to, the commencement of the commitment period, and agreement that the studio partner shall maintain the lease or ownership for the duration of the commitment period and shall not lease, sublease, or license any part of the production facility such that the studio partner occupies less than the minimum square feet for more than 12 consecutive months or for a period longer than the duration of the commitment period, nor sell any part of the New Jersey production facility, provided that a studio partner may sell the production facility if it remains the tenant in the production facility. The studio partner shall not receive any benefits from this Program for any activity of the tenant and the tenant shall not receive any benefits from this Program from the studio partner's designation.

Proposed new N.J.A.C. 19:31-21.8(g) adds that the Authority may request any documentation supporting the taxpayer's certification.

Proposed new N.J.A.C. 19:31-21.8(h) sets forth the commencement period and the length of the commitment period for inclusion in the award agreement. This section also sets forth the reporting requirements from an independent certified public accountant and the taxpayer's chief financial officer.

Proposed new N.J.A.C. 19:31-21.8(h)5, adds a provision to the award agreement indicating that the film-lease partner shall maintain the lease or ownership for the duration of the commitment period, and shall not sublease any part of the production facility for more than 12 consecutive months or for a period longer than the remainder of the duration of the commitment period, or sell any part of the New Jersey production facility, provided that a film-lease partner may sell the production facility if it remains the tenant in the production facility. If the film-lease partner subleases any part of the production facility, the film-lease partner shall not receive any benefits from this Program for any activity of the tenant and the tenant shall not receive any benefits from this Program from the film-lease partner's designation.

Proposed new N.J.A.C. 19:31-21.8(i) sets forth that tax credits not under the film lease partners designation shall not be added to the annual average of qualified film production expenses.

#### **N.J.A.C. 19:31-21.9 Recapture and Reduction of Tax Credits for Studio Partner or Film-Lease Partner**

Proposed new N.J.A.C. 19:31-21.9 establishes provisions for the recapture and reduction of tax credits for certain instances in which a studio partner and film-lease partner are not in compliance with certain requirements pertaining to each partner, including penalties and interest, which shall be deposited into the General Fund of the State.

Proposed new N.J.A.C. 19:31-21.9(a) sets forth that a studio partner failing to comply with the criteria of a studio partner during the commitment period shall be subject to the Authority recapturing excess benefits, as well as termination of future benefits.

Proposed new N.J.A.C. 19:31-21.9(b) sets forth the circumstances under which a film-lease partner shall lose eligibility for tax credits under the film-lease designation.

Proposed new N.J.A.C. 19:31-21.9(c) sets forth that if a film-lease partner submits documentation of a reduction of the annual average of qualified film production expenses to less than a minimum, the Authority shall reduce by 20 percent any tax credit award for a film for which the final documentation has been submitted.

Proposed new N.J.A.C. 19:31-21.8(d) sets forth that any funds recaptured, including penalties and interest shall be deposited into the General Fund of the State.

#### **N.J.A.C. 19:31-21.10 Application for Tax Credit Transfer Certificate**

Proposed new N.J.A.C. 19:31-21.10(e) sets forth that the Authority shall publish information concerning each tax credit transfer certificate on its website, including: the name of the transferer, name of the transferee,

the value of the tax credit transfer certificate, the State tax against which the transferee may apply the tax credit, and the consideration received by the transferer.

#### **N.J.A.C. 19:31-21.11 Cap on Total Credits**

The proposed amendments at recodified N.J.A.C. 19:31-21.11(a) provide that the cap on the value of certain tax credits, including the granting of tax credit transfers, approved by the Director of the Division of Taxation and the Authority, to taxpayers other than New Jersey studio partners and New Jersey film-lease partners, shall be increased from \$75,000,000 to \$100,000,000 in Fiscal Year 2019 and each fiscal year thereafter, prior to fiscal year 2035, rather than the existing Fiscal Year 2024.

In addition to the \$100,000,000 limitation on the value of tax credits approved by the Director of the Division of Taxation for New Jersey film-lease partners and the \$100,000,000 limitation on the value of tax credits approved for certain other taxpayers, the value of tax credits, including through tax credit transfer certificates, to New Jersey studio partners shall not exceed a cumulative total of \$100,000,000 in Fiscal Year 2021 and in each fiscal year thereafter, prior to fiscal year 2034, pursuant to proposed new N.J.A.C. 19:31-21.11(a)2.

Further, pursuant to N.J.A.C. 19:31-21.11(a)3, in addition to the \$100,000,000 limitation on the value of tax credits approved for New Jersey film partners and the \$100,000,000 limitation on the value of tax credits approved imposed by the subsection, the value of tax credits, including tax credit transfer certificates to New Jersey studio partners, shall not exceed a cumulative total of \$100,000,000 in Fiscal Year 2021 and in each fiscal year thereafter, prior to Fiscal Year 2034. Beginning in Fiscal Year 2025, in addition to the \$100,000,000 made available for New Jersey studio partners, up to an additional \$350,000,000 may be made available annually, in the discretion of the Authority, to New Jersey studio partners for the award of tax credits, including through tax credit transfer certificates, from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-362).

The proposed amendments at recodified N.J.A.C. 19:31-21.11(b) provide that the value of all tax credits approved by the Authority and the Director of the Division of Taxation shall not exceed a cumulative total of \$30,000,000, rather than the current \$10,000,000 in Fiscal Year 2019, and each year thereafter prior to Fiscal Year 2035, rather than the existing year of 2024.

Proposed new N.J.A.C. 19:31-21.11(c) codifies the requirements by which the Authority shall certify the amount of certain remaining tax credits available for approval and increases the cumulative total amounts accordingly.

Finally, proposed new N.J.A.C. 19:31-21.11(d) requires that, for any fiscal year in which the amount of tax credits approved pursuant to subsection (b) is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the Authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The Authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer pursuant to this section and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

#### **N.J.A.C. 19:31-21.12 Affirmative Action; and Prevailing Wage**

Proposed new N.J.A.C. 19:31-21.12(a) and newly codified subsection (b) set forth the Authority's affirmative action and prevailing wage requirements and applicability to construction contracts at the production facility undertaken in connection with, or as a condition of, tax credits received under the Program. Nothing in this section shall be construed as requiring affirmative action or the payment of prevailing wage for construction commencing more than two years after the Authority has issued the first tax credits to the taxpayer.

#### **N.J.A.C. 19:31-21.13 Appeals**

Proposed new N.J.A.C. 19:31-21.13, which replaces former provisions contained at N.J.A.C. 19:31-21.7(f) that are proposed for deletion, outlines the requirements for an applicant to appeal an action of the NJEDA Board and the process by which the Authority shall consider each appeal in a timely manner, as well as sets forth that the Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria, unless the application was submitted in response to a competitive application process.

As the Authority has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

#### **Social Impact**

The Garden State Film and Digital Media Jobs Program authorizes corporation business and gross income tax credits for certain expenses incurred for the production of certain films and digital media content in New Jersey, with additional benefits for production companies making long-term film production commitments, or significant capital investments in New Jersey. The proposed amendments and new rules will have a positive social impact by attracting motion picture, television, and digital media production in New Jersey, which will promote New Jersey's diverse locations and landscapes, incentivize diversity in recruitment and hiring, catalyze tourism activity, and reestablish New Jersey's competitiveness in the motion picture and television industry.

#### **Economic Impact**

The total amount of film tax credits available pursuant to the Legacy program is \$100 million, per State fiscal year, beginning with State Fiscal Year 2019 and ending with State Fiscal Year 2034, for a total available pool of \$1.5 billion. The total amount of film credits available for studio partners is \$100 million per State fiscal year, beginning in State Fiscal Year 2019 and ending in State Fiscal Year 2033, for a total available pool of \$1.2 billion. The total amount of film credits available for film-lease partners is \$100 million per State fiscal year, beginning in State Fiscal Year 2019 and ending in State Fiscal Year 2033, for a total available pool of \$1.2 billion. The total amount of digital media tax credits available under the Program is \$30 million per State fiscal year, beginning with State Fiscal Year 2019 and ending with State Fiscal Year 2034, for a total available pool of \$450 million.

Accordingly, the Authority anticipates that the Program will help strengthen the State's economy by attracting film, television, and digital media production, and the associated economic benefit that is generated through these productions, which includes: jobs, wages, tourism activity and spending, infrastructure and community investment in production facilities, patronage of local businesses and vendors, and value from media exposure. In addition, the availability of the new credit may result in additional film, television, and digital media production throughout the State, including the development of permanent film production studios, and will be an important tool in reclaiming New Jersey's competitiveness in this industry.

The proposed amendments and new rules will impose minimal costs on applicants to comply with application and reporting requirements. Finally, the fees for the Program are intended to ensure a source of necessary administrative fee revenue for the NJEDA to more fully cover the costs of administering the Program, including any third-party assistance, where necessary.

#### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed amendments and new rules are not subject to any Federal requirements or standards.

#### **Jobs Impact**

In New Jersey, average annual employment in the motion picture and video industry totals over 7,000 or 0.6 percent of the State's private sector workers, with wages paid of more than \$374 million or 0.4 percent of the State's total wages. The Authority anticipates that the proposed amendments and new rules will spur an indeterminate amount of job creation, which includes direct job creation through film, television, and digital media production companies producing content in New Jersey, and indirectly through local businesses and vendors that provide support

services to film, television, or digital media production. Furthermore, the proposed amendments and new rules, which offer additional benefits for production companies making long-term film production commitments and/or significant capital investment in New Jersey, will result in the creation of jobs that are less transient relative to individual film productions, and more permanent relative to sustained and ongoing film and television production.

#### Agriculture Industry Impact

The proposed amendments and new rules will not have any impact on the agriculture industry of the State of New Jersey.

#### Regulatory Flexibility Analysis

The proposed amendments and new rules may impose minimal reporting, recordkeeping, and other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Specifically, eligible businesses will be required to comply with the Authority's standard online application process and regular incentive compliance requirements, however, any costs due to reporting, recordkeeping, and other compliance requirements on qualifying businesses will be fully offset by the amount of financial assistance received, and the only professional services required for such purposes are fully offset by the amount of financial assistance received and the only professional services required for such purposes are from a certified public accountant. In addition, the fees under the Program, are based on standard NJEDA fees, and will not require eligible developers, businesses, or municipalities to utilize professional services for compliance.

#### Housing Affordability Impact Analysis

The proposed amendments and new rules will not have any effect on the average costs associated with housing, nor will it affect the affordability of housing in the State because the proposed amendments and new rules pertain to the tax-credit incentives of the Garden State Film and Digital Media Jobs Program.

#### Smart Growth Development Impact Analysis

The proposed amendments and new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the proposed amendments and new rules would evoke a change in housing production in Planning Areas 1 or 2, or in designated centers, under the State Development and Redevelopment Plan because the proposed amendments and new rules pertain to tax-credit incentives of the Garden State Film and Digital Media Jobs Program.

#### Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed amendments and new rules will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

### SUBCHAPTER 21. GARDEN STATE FILM AND DIGITAL MEDIA JOBS PROGRAM

#### 19:31-21.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority in consultation with the New Jersey Motion Picture and Television Development Commission and the New Jersey Division of Taxation to implement the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, as amended by P.L. 2019, c. 506; P.L. 2020, c. 156; P.L. 2021, c. 160; and P.L. 2021, c. 367.

#### 19:31-21.2 Definitions

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

**"Annual average of qualified film production expense"** means the annual average calculated by dividing the aggregate amount of qualified film production expenses in the reports processed and evaluated by the Authority, pursuant to N.J.A.C. 19:31-21.7(c), for any period of years during the commitment period by the number of those years.

...

**"Commission"** means the New Jersey Motion Picture and Television [Development] Commission.

**"Commitment period"** means for film-lease partners, a period selected by the taxpayer of at least five, but not to exceed, 10 consecutive years. The film-lease partner's commitment period shall begin on the earlier of the commencement of principal photography for the film-lease partner's initial production as a film-lease partner, or the first day after one year of site control by the film-lease partner of the New Jersey production facility. For studio partners, the commitment period shall be 10 years.

**"Digital media content"** means any data or information that is produced in digital form, including data or information created in analog form, but reformatted in digital form, text, graphics, photographs, animation, sound, and video content. **"Digital media content"** [does] **shall** not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.A. 2C:34-2 and 2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate, or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

...

**"Film"** means a feature film, a television series, or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. **"Film"** shall not include a production featuring news, current events, weather, and market reports or public programming, talk show, or sports event, a production that solicits funds, a production containing obscene material as defined under N.J.S.A. 2C:34-2 and 2C:34-3, or a production primarily for private, industrial, corporate, or institutional purposes, or a reality show, except for taxpayers applying for a tax credit against the tax imposed pursuant to section 5 of P.L. 1945, c. 165, if the production company of the reality show owns, leases, or otherwise occupies a production facility of no less than 20,000 square feet of real property for a minimum term of 24 months, and [invests] **makes a capital investment**, after July 1, 2018, of no less than \$3,000,000 in such a facility within a designated enterprise zone established pursuant to the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., or a UEZ-impacted business district established pursuant to N.J.S.A. 52:27H-66.2. The **capital** investment of the production company may include the **capital** investment of its landlord after July 1, 2018. To determine the **capital** investment of the landlord, the Authority shall multiply the owner's total capital investment in the building by the fraction, the numerator of which is the leased net leasable area, and the denominator of which is the total net leasable area. **"Film"** shall not include an award show or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

**"Film-lease partner"** or **"New Jersey film-lease partner"** means a taxpayer, including any taxpayer that is a member of a combined group pursuant to section 4 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-4), that has made a commitment to lease or acquire all or part of a New Jersey production facility, which leased or acquired space shall have an aggregate square footage of at least 50,000 square feet, for a period of five or more successive years and commits to spend, on a separate-entity basis, or in the aggregate with other members of the taxpayer's combined group, a minimum annual average of qualified film production expense of at least \$50,000,000 for the commitment period.

...

**"Incurred in New Jersey"** means, for any application submitted after July 3, 2018, the effective date of P.L. 2018, c. 56 (N.J.S.A. 54:10A-5.39b et seq.), pursuant to which a tax credit has not been allowed prior to July 2, 2021, the effective date of P.L. 2021, c. 160, service performed within New Jersey and tangible personal property

used or consumed in New Jersey. A service is performed in New Jersey to the extent that the individual performing the service is physically located in New Jersey while performing the service. Notwithstanding where the property is delivered or acquired, rented tangible property is used or consumed in New Jersey to the extent that the property is located in New Jersey during its use or consumption and is rented from a vendor authorized to do business in New Jersey or the film production company provides to the Authority the vendor's information in a form and manner prescribed by the Authority. Purchased tangible property located in New Jersey is not used and consumed in New Jersey, unless it is purchased from a vendor authorized to do business in New Jersey and is delivered to or acquired within New Jersey; provided, however, that if a production is also located in another jurisdiction, the purchased tangible property located in New Jersey is used and consumed in New Jersey if the acquisition and delivery of purchased tangible property is located in either New Jersey or another jurisdiction where the production takes place.

...  
 "Loan out company" means a personal service corporation or other entity that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" [does] shall not include entities contracted with by the taxpayer to provide goods or ancillary contractor services, such as catering, construction, trailers, equipment, or transportation.

...  
 "Primary place of business" means, for purposes of determining the amount of tax credit pursuant to N.J.A.C. 19:31-[21.6(l)2 and 3]21.6(a) and (b), the headquarters or commercial facility of a vendor at which the qualified expense transaction occurs.

...  
 "Production facility" means a building or buildings in this State, identified by the taxpayer, for the purpose of producing films or other commercial audiovisual products. The facility may include, but not be limited to, studio facilities, sound stages, production support space, including production offices, backlots, and post-production facilities, provided that the studio facilities and sound stages shall be the predominant uses.

...  
 "Qualified digital media content production expenses" means expenses incurred in New Jersey after July 1, 2018, for the production of digital media content. "Qualified digital media content production expenses" shall include, but not be limited to, wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., has been paid or is due; and, the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payments made to a loan out company or to an independent contractor shall not be deemed a "qualified digital media content production expenses" unless the payments are made in connection with a trade, profession, or occupation carried out in this State, or for the rendition of personal services performed in the State and the taxpayer has made the withholding required [by] pursuant to N.J.A.C. 19:31-21.3(c). "Qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content shall not be deemed "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey after July 1, 2018, for the production of a film, including pre-production costs, and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include, but [shall] not be limited to: wages and salaries of individuals employed in the production of a film on which the tax imposed by N.J.S.A. 54A:1-1 et seq., has been paid or is due; and, the costs for tangible personal property used and services performed, directly, and exclusively in the production of a film,

such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be deemed a "qualified film production expense[s]" unless the payments are made in connection with a trade, profession, or occupation [carried on] performed in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required [by] pursuant to N.J.A.C. 19:31-21.3(c). "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines[.], except as follows:

1. For a New Jersey studio partner that incurs more than \$15,000,000, but less than \$50,000,000, in qualified film production expenses in the State, an amount, not to exceed \$15,000,000 per project, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses;

2. For a New Jersey studio partner that incurs \$50,000,000, or more, but less than \$100,000,000, in qualified film production expenses in the State, an amount, not to exceed \$25,000,000 per project, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses;

3. For a New Jersey studio partner that incurs \$100,000,000, or more, but less than \$150,000,000, in qualified film production expenses in the State, an amount, not to exceed \$40,000,000 per project, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses; and

4. For a New Jersey studio partner that incurs \$150,000,000, or more in qualified film production expenses in the State, an amount, not to exceed \$60,000,000, per project, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses.

"Reality show" means content that is centered around the filming of people in real-life, predominantly unscripted, or soft-scripted, situations.

...  
 "Studio partner," or "New Jersey studio partner," means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility of 250,000 square feet or more. Studio partner may include any other member of the taxpayers' combined group pursuant to P.L. 2018, c. 131 (N.J.S.A. 54:10A-4.11).

...  
 "Total digital media content production expenses" means costs for services performed and property used or consumed in the production of digital media content including, but not limited to, wages and salaries.

"Total film production expenses" means costs for services performed and tangible personal property used or consumed in the production of a film including, but not limited to, wages and salaries.

#### 19:31-21.3 Eligibility criteria

(a) A taxpayer, including a studio partner, a film-lease partner, or a member of a studio partner's or film-lease partner's combined group, shall be eligible for the program for film tax credits if the Authority finds that:

1. The taxpayer will incur after July 1, 2018, at least 60 percent of the total film production expenses, exclusive of post-production costs, for services performed and goods purchased through vendors authorized to

do business in New Jersey, or the qualified film production expenses of the taxpayer during [one] **the privilege period or taxable year for services performed, and goods purchased, through vendors authorized to do business in New Jersey, including wages and salaries, exceed \$1,000,000 per production;**

2. The principal photography of the film commences within [the earlier of] 180 days from the date of the completed application for the tax credit[, or 150 days from the date of the initial approval of the application] pursuant to N.J.A.C. 19:31-21.7(a) for the tax credit;

3. (No change.)

4. The taxpayer submits a tax credit verification report prepared by [an] **a qualified** independent certified public accountant licensed in this State in accordance with N.J.A.C. 19:31-21.7(c)2; and

5. (No change.)

(b) A taxpayer shall be eligible for the program for digital media tax credits if the Authority finds that:

1. The taxpayer will incur qualified digital media content production expenses during a privilege period or taxable year, provided that:

i.-ii. (No change.)

iii. The taxpayer submits a tax credit verification report prepared by [an] **a qualified** independent certified public accountant licensed in this State in accordance with N.J.A.C. 19:31-21.7(c)2; and

2. (No change.)

(c) (No change.)

(d) **For any taxpayer applying to be designated as a studio partner, the taxpayer will be eligible if the Authority finds the taxpayer has demonstrated to the Authority that the taxpayer meets the definition of a studio partner and that it shall satisfy the conditions of approval at N.J.A.C. 19:31-21.8(e), within the prescribed time.**

1. No more than three film production companies may be designated as a New Jersey studio partner.

2. For a film-lease partner, if the document evidencing current or prospective site control submitted in the application, pursuant to N.J.A.C. 19:31-21.4(c), has a term that extends for less than the commitment period based on the anticipated commencement of the commitment period, the taxpayer's commitment period shall be reduced accordingly. If the taxpayer's commitment period would be reduced below the minimum commitment period for a film-lease partner, the taxpayer shall not be eligible as a film-lease partner. For a studio partner, the document evidencing current or prospective site control submitted in the application, pursuant to N.J.A.C. 19:31-21.4(b), shall have a term that extends for the commitment period based on the anticipated commencement of the commitment period.

(e) For any taxpayer applying to be designated as a film-lease partner, the taxpayer will be eligible if the Authority finds that the taxpayer has demonstrated to the Authority that the taxpayer meets the definition of a film-lease partner, except that, at the time of application to be designated, the annual average of qualified film production expense shall be evaluated based on the taxpayer's projections.

(f) For any taxpayer applying to produce a reality show, the taxpayer will be eligible for the Program if the Authority finds the taxpayer meets the requirements set forth at (a) above, and demonstrates to the Authority that the taxpayer's production meets the definition of a reality show and meets the requirements for reality show productions set forth in the definition of a film.

(g) For two or more buildings to qualify as a production facility, the buildings must be proximate to each other. Proximate buildings shall include, but not be limited to, buildings that are adjacent to each other or across a single public right-of-way from each other. The following are examples of buildings that are proximate:

1. A production facility consists of building A and building B, which are both on the same block, but separated by other buildings.

2. A production facility will consist of building A and building B, which will be adjacent to each other, but have separate entrances.

3. A production facility consists of building A and building B, which are located in an industrial park and are separated solely by a parking lot.

19:31-21.4 Application submission requirements

(a) A completed application for film tax credits shall include, but not be limited to, the following:

1.-2. (No change.)

3. A breakout of projected qualified film production expenses, pursuant to N.J.A.C. 19:31-[21.3(a)2]**21.3(a)1**, in New Jersey;

4. **[A] For applications filed before July 2, 2021, the effective date of P.L. 2021, c. 160, a breakout of projected costs, including pre-production and post-production costs, to be incurred, pursuant to N.J.A.C. 19:31-21.6[(h)2 or 3](a)1, for services performed and tangible personal property purchased through a vendor whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County; and for applications filed on or after July 2, 2021, a breakout of projected costs, including pre-production and post-production costs, to be incurred, pursuant to N.J.A.C. 19:31-21.6(a)2 for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York;**

5.-7. (No change.)

[8. An election by the taxpayer as to whether the tax credit will be based on total film production expenses, exclusive of post-production costs, or on qualified film expenses during a privilege period or taxable year, that exceed \$1,000,000 per production;]

[9.] **8.** (No change in text.)

[10.] **9.** If the applicant intends to participate in the bonus amount of tax credit for a diversity plan pursuant to N.J.A.C. 19:31-21.6(l)1, satisfaction of the requirements [in] at N.J.A.C. 19:31-21.6(l)1i through iv, **and for the increased bonus amount of tax credits pursuant to N.J.A.C. 19:31-21.6(l)2, satisfaction of the requirements at N.J.A.C. 19:31-21.6(l)2;**

[11.] **10.** If the film production involves an eligible reality show, a description of the capital investment, which shall be no less than \$3,000,000, [and] a description of the production facility, which shall be no less than 20,000 square feet of real property, respectively, within a designated enterprise zone established pursuant to the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., or a UEZ-impacted business district established pursuant to N.J.S.A. 52:27H-66.2[.], **and an executed letter of interest, lease, sublease, deed, or purchase contract; and**

**11. If the applicant is a member of a studio partner's or a film-lease partner's combined group, written verification that the taxpayer is a member of the studio partner's or film-lease partner's combined group.**

(b) A completed application to be designated as a studio partner shall include, but not be limited to, the following:

1. An executed deed, lease, or sublease for at least 10 years, or purchase contract for the production facility;

2. A detailed floorplan, indicating the uses of each area, of the production facility;

3. Evidence that the applicant has made a commitment to produce films or commercial audiovisual products in New Jersey;

4. Preliminary site plan approval for the production facility, an adopted redevelopment plan by a municipality or municipalities which contemplates the development of the production facility, or an executed redevelopment agreement with a municipality or municipalities for the development of the production facility; and

5. Any other necessary and relevant information, as determined by the Authority for a specific application.

(c) A completed application to be designated as a film-lease partner shall include, but not be limited to, the following:

1. An executed letter of interest, lease, sublease, deed, or purchase contract for the production facility;

2. A detailed floorplan, indicating the uses of each area, of the production facility;

3. A narrative detailing how the taxpayer will meet the minimum annual average of qualified film production expenses;

4. Information on all production projects, known or anticipated, for the commitment period, including, but not be limited to,



production names, estimated project dates, and estimated qualified film production expenses;

5. Financial information demonstrating the taxpayer's ability to meet the minimum annual average of qualified film production expenses; and

6. Any other necessary and relevant information, as determined by the Authority, for a specific application.

[(b)] (d) A completed application for digital media tax credits shall include, but not be limited to, the following:

1. A preliminary or actual budget demonstrating at least \$2,000,000 of total digital media content production expenses incurred for services performed and goods purchased through vendors authorized to do business in New Jersey; and, pursuant to N.J.A.C. 19:31-21.6(b)1i or 2i, a breakout of qualified digital media expenses for services performed and tangible personal property purchased through a vendor whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County;

2.-4. (No change.)

5. If the applicant intends to participate in the bonus amount of tax credit for a diversity plan pursuant to N.J.A.C. 19:31-21.6(l)1, satisfaction of the requirements [under] pursuant to N.J.A.C. 19:31-21.6(l)1i through iv, and for the increased bonus amount of tax credits, pursuant to N.J.A.C. 19:31-21.6(l)2, satisfaction of the requirements at N.J.A.C. 19:31-21.6(l)2i, ii, and iii.

#### 19:31-21.5 Fees

(a) A non-refundable fee shall accompany every application for tax credits, as follows:

1. For projects with total [tax credits of] qualified film production expenses or digital media production expenses of less than \$1,000,000 [or less], the fee to be charged at application shall be [\$500.00] \$100.00; [and]

2. For projects with total [tax credits in excess] qualified film production expenses or digital media production expenses of \$1,000,000, but less than \$6,000,000, the fee to be charged at application shall be [\$2,500] \$250.00[.];

3. For projects with total qualified film production expenses or digital media production expenses of \$6,000,000, but less than \$15,000,000, the fee to be charged at application shall be \$2,000;

4. For projects with total qualified film production expenses or digital media production expenses of \$15,000,000, but less than \$30,000,000, the fee to be charged at application shall be \$5,000;

5. For projects with total qualified film production expenses or digital media production expenses of \$30,000,000, or more, the fee to be charged at application shall be \$20,000;

6. For applicants applying to be designated as a studio partner, the fee to be charged at application shall be \$10,000; and

7. For applicants applying to be designated as a film-lease partner, the fee to be charged at application shall be \$5,000.

(b) A non-refundable fee shall be charged prior to the approval of the tax credit by the Authority as follows, except that the fee shall be refunded if the Authority does not approve the credit:

1. For projects with total qualified film production expenses or digital media production expenses of less than \$1,000,000, the fee to be charged prior to approval shall be \$100.00;

2. For projects with total qualified film production expenses or digital media production expenses of \$1,000,000, but less than \$6,000,000, the fee to be charged prior to approval shall be \$500.00;

3. For projects with total qualified film production expenses or digital media production expenses of \$6,000,000, but less than \$15,000,000, the fee to be charged prior to approval shall be \$5,000;

4. For projects with total qualified film production expenses or digital media production expenses of \$15,000,000, but less than \$30,000,000, the fee to be charged prior to approval shall be \$12,000;

5. For projects with total qualified film production expenses or digital media production expenses of \$30,000,000 or more, the fee to be charged prior to approval shall be \$50,000;

6. For applicants applying to be designated as a studio partner, the fee to be charged prior to approval shall be \$50,000; and

7. For applicants applying to be designated as a film-lease partner, the fee to be charged prior to approval shall be \$50,000.

[(b)] (c) A non-refundable fee [of 0.5 percent of the approved tax credit amount] shall be paid to the Authority prior to the receipt of the tax credit[.] as follows:

1. For projects with total qualified film production expenses or digital media production expenses of less than \$1,000,000, the fee to be charged shall be \$100.00;

2. For projects with total qualified film production expenses or digital media production expenses of \$1,000,000, but less than \$6,000,000, the fee to be charged shall be \$500.00;

3. For projects with total qualified film production expenses or digital media production expenses of \$6,000,000, but less than \$15,000,000, the fee to be charged shall be \$5,000;

4. For projects with total qualified film production expenses or digital media production expenses of \$15,000,000, but less than \$30,000,000, the fee to be charged shall be \$12,000; and

5. For projects with total qualified film production expenses or digital media production expenses of \$30,000,000 or more, the fee to be charged shall be \$50,000.

[(c)] (d) A non-refundable fee [of \$1,000] shall be paid to the Authority upon each application for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-[21.8.]21.10 as follows:

1. For projects with total qualified film production expenses or digital media production expenses of less than \$1,000,000, the fee to be charged shall be \$1,000; and

2. For projects with total qualified film production expenses or digital media production expenses of \$1,000,000, or greater, the fee to be charged shall be \$5,000.

(e) A taxpayer who is a film-lease partner shall pay to the Authority an annual servicing fee of \$10,000. The servicing fee shall be paid at the time the film-lease partner submits its annual report, pursuant to N.J.A.C. 19:31-21.8(h)2.

(f) A taxpayer who is a studio partner shall pay to the Authority a non-refundable fee of \$5,000 for the first six-month extension and \$7,500 for each subsequent extension to the date the temporary certification of occupancy for the production facility is due, pursuant to N.J.A.C. 19:31-21.8(e)3.

[(d)] (g) (No change in text.)

#### 19:31-21.6 Tax credit amounts; bonus amount; carryforward of tax credits

(a) A taxpayer, upon final approval of an application to the Authority and the Director for film tax credits pursuant to N.J.A.C. 19:31-21.7[(d)](e), shall be allowed a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due for the taxable year [under] pursuant to N.J.S.A. 54A:1-1 et seq., which tax credit may be applied for a privilege period or taxable year commencing on or after July 1, 2018, but before July 1, 2034, in an amount equal to:

1. For applications received prior to July 2, 2021, the effective date of P.L. 2021, c. 160, 35 percent of the qualified film production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

2. For applications received on or after July 2, 2021, the effective date of P.L. 2021, c. 160, 30 percent of the qualified film production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York.

3. For applications received prior to January 7, 2021, the effective date of P.L. 2020, c. 156, 30 percent of the qualified film production expenses of the taxpayer[, which tax credit may be applied for a privilege period or taxable year commencing on or after July 1, 2018, but before July 1, 2023] not included at (a)1 or 2 above.

4. For applications received on or after January 7, 2021, the effective date of P.L. 2020, c. 156, 35 percent of the qualified film production expenses of the taxpayer not included at (a)1 or 2 above.

(b) A taxpayer, upon final approval of an application to the Authority and the Director for digital media tax credits pursuant to N.J.A.C. 19:31-21.7[(d)](e), shall be allowed a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due for the taxable year [under] pursuant to N.J.S.A. 54A:1-1 et seq., which tax credit may be applied for a privilege period or taxable year commencing on or after July 1, 2018, but before July 1, 2034, in an amount equal to:

1. For applications received prior to January 12, 2022, the effective date of P.L. 2021, c. 367:

i. 25 percent of the qualified digital media content production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

ii. 20 percent of the qualified digital media content production expenses of the taxpayer[, which tax credit may be applied for a privilege period or taxable year commencing on or after July 1, 2018, but before July 1, 2023] not included at (b)1i above.

2. For applications received on or after January 12, 2022, the effective date of P.L. 2021, c. 367:

i. 35 percent of the qualified digital media content production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

ii. 30 percent of the qualified digital media content production expenses of the taxpayer not included at (b)1i above.

(c)-(k) (No change.)

(l) Notwithstanding any limit [in] at (a) and (b) above, the tax credits awarded may be increased pursuant to the following:

1. A taxpayer shall be allowed an increase in the tax credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., in an amount equal to two percent of the qualified film or digital media content production expenses, provided that the application is accompanied by a diversity plan, outlining:

i.-iv. (No change.)

2. The amount of the increase to a tax credit allowed pursuant to (l)1 above shall be four percent of the qualified film or digital media content production expenses of the taxpayer if the diversity plan, in addition to meeting the requirements at (l)1 above, outlines specific goals that include hiring no less than five percent of persons as performers in the film or digital media production who:

i. Are members of ethnic minority groups that are under-represented in film or digital media productions in the United States, compared to their representation in the population of the United States;

ii. If credited, have been residents of New Jersey for at least 12 months preceding the beginning of filming or recording, and if uncredited, residents of any municipality in New Jersey in which filming occurs as part of the production for at least 12 months preceding the beginning of filming or recording at that location, or any surrounding municipality. For purposes of this subparagraph, a surrounding municipality shall be an adjacent municipality; and

iii. Are members of a bona fide labor union representing film and television performers.

Recodify existing 2.-3. as 3.-4. (No change in text.)

19:31-21.7 Evaluation process for tax credits; initial approval for tax credits, award of tax credits; appeals]

(a) Applications for film tax credits shall be submitted to the Commission, which, upon review for content eligibility, will forward the application to the Authority with the Commission's recommendation.

1. The application for tax credits shall be considered by the Authority for initial approval on a first-in-time basis, subject to [an] the annual [cap

of \$ 75 million for film production tax credits and \$ 10 million for digital production tax credits in fiscal year 2019, and in each fiscal year thereafter prior to fiscal year 2024] caps at N.J.A.C. 19:31-21.11.

2. At initial approval, the Authority will designate the maximum amount of the tax credit and will assign a tax credit vintage year to the tax credit. To assist the Authority in reviewing the application, the Authority may retain a third-party consultant, at the cost of the applicant, to review the budget submitted by the applicant to determine if the qualified film or digital media expenses are within reasonable industry standards. The initial approval letter received by the taxpayer will include conditions subsequent to receipt of the tax credit including, but not limited to, the requirement for progress reports, [and] the date by when final documentation pursuant to (b) below is required. For projects submitted by studio partners and film-lease partners, the initial approval letter shall include a condition that the Authority's approval of the final documentation shall require the taxpayer remaining a studio partner or a film-lease partner. Failure to submit timely, periodic reports that demonstrate satisfactory progress or final documentation may lead to the forfeiture of the tax credit.

(b) (No change.)

(c) Upon completion of total film production expenses or the total digital media content production expenses, or the incurrence of qualified film production expenses during a privilege period or taxable year that exceed \$1,000,000 per production, the taxpayer shall submit the following final documentation, which the Authority, in consultation with the Director and the Commission, shall process and evaluate:

1. With respect to a film, evidence satisfactory to the Commission, and written confirmation from the Commission to the Authority that principal photography commenced within the earlier of 180 days from the date of the completed application [or 150 days from the date of initial approval by the Authority] for the tax credit;

2. The Authority shall review and approve actual budgets and proof of total and qualified film production expenses or total and qualified digital media content production expenses, including a listing of the name of the company or person paid; his, her, or its Federal identification number; and a report prepared by [an] a qualified independent certified public accountant licensed in the State verifying the expenses claimed by the applicant. The report shall be prepared by [the] a qualified independent certified public accountant, as described at (d) below, pursuant to agreed-upon procedures prescribed by the Authority and the Director; and shall include such information and documentation as shall be determined to be necessary by the Authority and the Director to substantiate the total and qualified film production expenses or the total and qualified digital media content production expenses of the taxpayer].

i. The report shall include such information and documentation as shall be determined to be necessary by the Authority and the Director to substantiate the total and qualified film production expenses, or the total and qualified digital media content production expenses of the taxpayer, including:

(1) A review of all non-payroll qualified film production expense items and non-payroll digital media content production expense items over \$20,000;

(2) A review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are greater than \$2,500, but less than \$20,000;

(3) A review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are less than \$2,500;

(4) A review of the qualified wages for the 15 employees, independent contractors, or loan-out companies with the highest qualified wages; and

(5) A review of the qualified wages for 35 randomly selected employees, independent contractors, or loan-out companies with qualified wages other than the 15 employees, independent contractors, or loan-out companies with the highest qualified wages; and

ii. In the report, the taxpayer's qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified for the reviewed non-payroll

qualified film production expense items, non-payroll digital media content production expense items and qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses also shall be adjusted based on the projection of any discrepancies identified based on the review of randomly selected expense items or wages in each strata pursuant to this subsection to the extent that the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages in each strata. The determination shall be provided by the qualified independent certified public accountant, in writing, to the taxpayer, the Authority, and the Director, and the taxpayer shall include a copy of the written determination in the filing of a return that includes a claim for a tax credit allowed pursuant to this section;

iii. The amount of the qualified film production expenses or qualified digital media content production expenses in the [certification] report shall not be increased regardless of additional expenses after the date of the [certification] report; and

**3. For taxpayers that received initial approval for the production of a reality show, the following is additionally required:**

i. The report required at (c)2 above, shall include verification of the actual capital investment in the production facility. If the capital investment in the report is less than the minimum eligibility requirement in the definition of film, the taxpayer shall no longer be eligible for tax credits for the production;

ii. The temporary certificate of occupancy;

iii. A detailed floorplan, indicating the uses of each area, of the production facility;

iv. The taxpayer shall submit the executed deed, lease, or sublease evidencing site control. If the taxpayer is a tenant and the lease or sublease has a term, including renewals and options, of less than the minimum eligibility requirement in the definition of film, the taxpayer shall no longer be eligible for tax credits for the production; and

v. Any other information necessary to determine compliance with the requirements of a reality show.

[3.] 4. (No change in text.)

[4.] 5. If the applicant was initially approved for a bonus amount of tax credit for a diversity plan pursuant to N.J.A.C. 19:31-21.6(1)1 or 2, evidence of good faith efforts to undertake the diversity plan. The bonus amount shall not be included in the amount of the final approval if the applicant fails to submit satisfactory evidence to the Authority and the Division; and

[5. The Division shall conduct verification of partners or members of pass through entities, such as partnerships or LLCs.]

**6. A certification from the taxpayer that the information provided pursuant to this subsection is true under the penalty of perjury.**

(d) The Authority shall qualify certified public accountants and provide to the taxpayer the list of qualified certified public accountants, provided however, the taxpayer may select a certified public accountant that is independent to the taxpayer and not on the Authority's list of qualified certified public accountants for the purposes of the report at (c)2 above, if the taxpayer demonstrates an extenuating circumstance prohibiting the taxpayer from retaining a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the report or none of the qualified certified public accountants are independent to the taxpayer;

[(d)] (e) The Authority, in consultation with the Division and Commission, shall determine final approval of the tax credit in an amount based on the Authority's determination of the total and qualified film production expenses or total and qualified digital media content production expenses reported in the qualified independent certified public accountant's certification, but in no event shall the tax credit be greater than the amount stated in the Authority's initial approval. The Authority shall provide, in writing to the taxpayer, the determination of the expenses, and a copy of the written determination shall be included in the

filing of a return that includes a claim for a tax credit allowed pursuant to this section.

[(e)] (f) If the Authority has approved the application, the Authority shall notify the Division of the final approval. The Division shall then issue the tax credit certificate to the applicant. The taxpayer's use of the tax credit shall be limited by N.J.A.C. 19:31-[21.9(a)]**21.11(a)** or (b), as applicable.

[(f) An applicant may appeal the Authority's initial approval or denial under (a) above and final approval or denial under (c) above by submitting, in writing to the Authority, within 20 calendar days from the date of the Authority'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 Procedures Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administration Procedure Rules, N.J.A.C. 1:1. Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. The Chief Executive Officer, or equivalent officer, of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, or equivalent officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.

4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.]

**(g) For completed film tax credit applications submitted by film-lease partners and studio partners, upon request, the Authority may provide a non-binding, administrative pre-certification approval letter contingent on Board approval.**

**19:31-21.8 Evaluation process for designation of studio partner or film-lease partner; initial approval; annual reports**

(a) An application for designation as a studio partner or a film-lease partner shall be submitted to the Authority.

(b) The completed application for designation as a studio partner shall be considered by the Authority for approval on a first-in-time basis. If interest in studio partner designation so warrants, at the Authority's discretion, and upon notice, the Authority may institute a competitive application process whereby all completed applications submitted by a date certain will be evaluated as if submitted on that date. No more than three studio partner applications shall be approved by the Board.

(c) The completed application for designation as a film-lease partner shall be considered by the Authority for approval on a first-in-time basis.

(d) To assist the Authority in designating the film-lease partner, the Authority may employ an independent consultant, at the cost of the applicant, or may consult with the Commission, to review the plan submitted by the applicant to determine the feasibility of projected qualified film production expenses.

(e) Upon review of the application, the Board shall consider whether to designate the taxpayer as a studio partner or film-lease

partner, pursuant to N.J.A.C. 19:31-21.3(d) and (e), respectively. The designation shall expire at the end of the studio partner or film-lease partner's commitment period. Following approval by the Board, the Authority shall require the taxpayer to execute and return an approval letter to the Authority. The Board's designation shall be subject to conditions subsequently set forth in the approval letter. The conditions in the approval letter must be met to retain the designation.

1. The conditions of approval shall include, but not be limited to, submission of periodic progress reports; committed financing, if applicable; site plan approval, if applicable; evidence of final site control of the production facility; final floorplan indicating the uses of each area; and the temporary certificate of occupancy.

2. As set forth at N.J.A.C. 19:31-21.12, the conditions shall also include the requirement that construction at the production facility complies with the prevailing wage and affirmative action requirements, and that the project does not violate any environmental law requirements, including, but not limited to, Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.

3. A studio partner shall submit the temporary certificate of occupancy within 36 months from the Board approval of the designation. The Authority shall grant no more than two six-month extensions of this deadline.

4. Absent extenuating circumstances, or the Authority's determination in its sole discretion, the Authority's designation shall expire if the conditions are not satisfied within the period of time prescribed in this subsection, or in the approval letter.

(f) A studio partner shall execute an award agreement that shall include, but not be limited to:

1. The commencement of the commitment period; and

2. An agreement that the studio partner shall maintain the lease or ownership of the production facility for the duration of the commitment period. The studio partner shall:

i. Not lease, sublease, or license any part of the production facility such that the studio partner occupies less than the minimum amount of square feet for more than 12 consecutive months or for a period longer than the remainder of the duration of the commitment period;

ii. Not sell any part of the New Jersey production facility, provided that a studio partner may sell the production facility if it remains the tenant in the production facility occupying at least the minimum amount of square feet; and

iii. Not receive any benefits from this program for any activity of its tenant or subtenant and the tenant or subtenant shall not receive any benefits from this program from the studio partner's designation.

(g) A studio partner shall certify, at time of submission of final documentation for a film pursuant to N.J.A.C. 19:31-21.7(c), that it continues to meet the criteria of a studio partner as set forth at N.J.A.C. 19:31-21.3(d). The Authority may request, at its sole discretion, any documentation supporting the taxpayer's certification.

(h) A film-lease partner shall execute an award agreement that shall include, but not be limited to, the following:

1. The commencement and length of the commitment period;

2. A requirement to submit the following, annually, within 120 days after the end of the film-lease partner's privilege period:

i. A report prepared by a qualified independent certified public accountant, pursuant to N.J.A.C. 19:31-21.7(d), verifying the amount of qualified production expenses incurred by the taxpayer, under the film-lease partner designation, in each privilege period of the commitment period to date, including expenses incurred on projects in progress; and

ii. A report from the taxpayer's chief financial officer, or equivalent officer, including the following:

(1) Information on all production projects, known or anticipated, for the remaining years of the commitment period including, but not limited to, production names, and estimated project dates;

(2) An estimate of all anticipated qualified film production expenses for the remaining years of the commitment period; and

(3) A certification indicating whether or not the film-lease partner is aware of any condition, event, or act, which would cause the film-

lease partner to not be in compliance with the approval, the Act, or this subchapter;

3. A provision to reduce any tax credits pursuant to N.J.A.C. 19:31-21.9(c);

4. A provision indicating the film-lease partner cannot submit the final documentation for any project pursuant to N.J.A.C. 19:31-21.7(c), until the film-lease partner has attained at least the minimum annual average of qualified film production expense. Once the minimum average of qualified film production expense is met initially, all subsequent final documentation submission shall be subject to the reduction set forth at N.J.A.C. 19:31-21.9(b); and

5. A provision indicating the film-lease partner shall maintain the lease or ownership for the duration of the commitment period, and shall not sublease any part of the production facility for more than 12 consecutive months or for a period longer than the remainder of the duration of the commitment period, or sell any part of the New Jersey production facility, provided that a film-lease partner may sell the production facility if it remains the tenant in the production facility. If the film-lease partner subleases any part of the production facility, the film-lease partner shall not receive any benefits from this program for any activity of the tenant and the tenant shall not receive any benefits from this program from the film-lease partner's designation.

(i) Any film tax credit applications submitted by a film-lease partner, not under the film-lease partner designation, shall not be counted towards the annual average of qualified film production expense and shall not be included in the film-lease partner's annual report pursuant to (h)2i above.

#### 19:31-21.9 Recapture and reduction of tax credits for studio partner or film-lease partner

(a) For a studio partner, if, at any time during the commitment period pursuant to section 65 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-333), the Authority determines the taxpayer no longer complies with the requirements pursuant to N.J.A.C. 19:31-21.8(f), or otherwise fails to meet the criteria of a studio partner, the Authority shall recapture the excess benefit provided to studio partners for purposes of certain qualified film production expenses, and all films for which an initial approval has been given, but for which the Authority has not approved final documentation, shall terminate.

(b) If at any time during the commitment period, a film-lease partner submits final documentation pursuant to N.J.A.C. 19:31-21.7(c) prior to attaining the minimum annual average of qualified film production expenses, the film lease partner shall not be eligible for tax credits under the film-lease designation.

(c) Once the film-lease partner attains at least the minimum annual average of qualified film production expenses, if at any time during the commitment period, a film-lease partner submits final documentation pursuant to N.J.A.C. 19:31-21.7(c) that results in a reduction of the annual average of qualified film production expenses to less than the minimum, the Authority shall reduce by 20 percent any tax credit award for a film for which final documentation pursuant to N.J.A.C. 19:31-21.7(c) has been submitted. This reduction shall continue until a privilege period when the annual average of qualified film production expenses based on all final documentation submitted has been restored to at least the minimum.

(d) Any funds recaptured pursuant to this section, including penalties and interest, shall be deposited into the General Fund of the State.

#### 19:31-[21.8]21.10 Application for tax credit transfer certificate

(a) Tax credits, upon receipt thereof by a taxpayer from the Director and the Authority, may be transferred, by sale or assignment, in full or in part, pursuant to this section, subject to the cumulative total [in] at N.J.A.C. 19:31-[21.9(a)]21.11(a), to any other taxpayer who may have a tax liability pursuant to N.J.S.A. 54:10A-5 or 54A:1-1 et seq. A taxpayer shall apply to the Authority and the Director for a tax credit transfer certificate, in lieu of the business being allowed any amount of the credit against the tax liability of the taxpayer. Such application shall identify the specific tax credits to be transferred, the consideration received therefor, and the identity of the transferee. Once approved by the Chief Executive

Officer of the Authority and the Director of the Division of Taxation, a tax credit transfer certificate shall be issued to the taxpayer, naming the transferee. The certificate issued to the business shall include a statement waiving the taxpayer's right to claim that amount of the tax 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 tax credits pursuant to N.J.A.C. 19:31-21.6.

(b)-(d) (No change.)

(e) **The Authority shall publish on its internet website the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:**

1. **The name of the transferor;**
2. **The name of the transferee;**
3. **The value of the tax credit transfer certificate;**
4. **The State tax against which the transferee may apply the tax credit; and**
5. **The consideration received by the transferor.**

19:31-[21.9]21.11 Cap on total credits

(a) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the Director and the Authority pursuant to N.J.A.C. 19:31-21.6(a) shall [not exceed a] **be as follows:**

1. **To taxpayers, other than New Jersey studio partners and New Jersey film-lease partners, the cumulative total [of \$75,000,000] shall not exceed \$100,000,000 in fiscal year 2019, and in each fiscal year thereafter prior to fiscal year [2024] 2035, as indicated by the fiscal year in which the tax credit was initially approved, to apply against the tax imposed pursuant to N.J.S.A. 54:10A-5 and the tax imposed pursuant to N.J.S.A. 54A:1-1 et seq.**

2. **The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the Director and the Authority pursuant to N.J.A.C. 19:31-21.6(a), subsection a. of section 1 at P.L. 2018, c. 56 (N.J.S.A. 54:10A-5.39b), and subsection a. of section 2 at P.L. 2018, c. 56 (N.J.S.A. 54A:4-12b) to New Jersey studio partners shall not exceed a cumulative total of \$100,000,000 in Fiscal Year 2021, and in each fiscal year thereafter prior to Fiscal Year 2034 to apply against the tax imposed pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and the tax imposed pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. Beginning in Fiscal Year 2025, in addition to the \$100,000,000 made available for New Jersey studio partners, pursuant to this paragraph, up to an additional \$350,000,000 may be made available annually, in the discretion of the Authority, to New Jersey studio partners for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-362).**

3. **The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the Director and the Authority pursuant to N.J.A.C. 19:31-21.6(a), subsection a. of section 1 at P.L. 2018, c. 56 (N.J.S.A. 54:10A-5.39b), and subsection a. of section 2 at P.L. 2018, c. 56 (N.J.S.A. 54A:4-12b), to New Jersey film-lease partners shall not exceed a cumulative total of \$100,000,000 in Fiscal Year 2021, and in each fiscal year thereafter prior to fiscal year 2034 to apply against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and the tax imposed pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. Beginning in Fiscal Year 2025, in addition to the \$100,000,000 made available for New Jersey film-lease partners pursuant to this paragraph, up to an additional \$100,000,000 may be made available annually, in the discretion of the Authority, to New Jersey film-lease partners for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-362).**

4. **If the applicable cumulative total amount of tax credits initially approved and tax credit transfer certificates approved for privilege periods**

**or taxable years commencing during a single fiscal year [under] pursuant to N.J.A.C. 19:31-21.6(a) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been approved a tax credit or tax credit transfer certificate amount for that reason shall have their tax credits considered for initial approval and their tax credit transfer certificates considered for approval, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates [under] pursuant to N.J.A.C. 19:31-21.6(a) are not in excess of the amount of applicable credits available.**

(b) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the Authority and the Director pursuant to N.J.A.C. 19:31-21.6(b), **subsection b. of section 1 at P.L. 2018, c. 56 (N.J.S.A. 54:10A-5.39b), and subsection b. of section 2 at P.L. 2018, c. 56 (N.J.S.A. 54A:4-12b)** shall not exceed a cumulative total of [\$10,000,000] **\$30,000,000** in [fiscal year] **Fiscal Year 2019**, and in each fiscal year thereafter prior to [fiscal year 2024] **Fiscal Year 2035**, as indicated by the tax credit vintage year, to apply against the tax imposed pursuant to N.J.S.A. 54:10A-5 and the tax imposed pursuant to N.J.S.A. 54A:1-1 et seq. If the total amount of tax credits initially approved and tax credit transfer certificates approved for privilege periods or taxable years commencing during a single fiscal year [under] **pursuant to N.J.A.C. 19:31-21.6(b)** exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and who have not been approved a tax credit or tax credit transfer certificate amount for that reason shall have their tax credits considered for initial approval and their tax credit transfer certificates considered for approval, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates [under] **pursuant to N.J.A.C. 19:31-21.6(b)** are not in excess of the amount of credits available.

(c) **Notwithstanding any provision at (a) above, for any fiscal year in which the amount of tax credits approved to New Jersey studio partners, New Jersey film-lease partners, or taxpayers other than New Jersey studio partners and New Jersey film-lease partners pursuant to N.J.A.C. 19:31-21.6(a), subsection a. of section 1 at P.L. 2018, c. 56 (N.J.S.A. 54:10A-5.39b), and subsection a. of section 2 at P.L. 2018, c. 56 (N.J.S.A. 54A:4-12b) is less than the cumulative total amount of tax credits permitted to be approved to each such category, in that fiscal year, the Authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease partners, or taxpayers other than New Jersey studio partners and New Jersey film-lease partners in the subsequent fiscal year by the certified amount remaining for each such category from the prior fiscal year. The Authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer pursuant to this section, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease partners, or taxpayers other than New Jersey studio partners and New Jersey film-lease partners in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer. In each fiscal year in which tax credits remain unapproved for, or unredeemed, or not transferred by, New Jersey film-lease partners or taxpayers other than New Jersey studio partners and New Jersey film-lease partners, the authority may reallocate some or all of such remaining tax credits in the subsequent fiscal year between the category of New Jersey film-lease partners and the category of taxpayers other than New Jersey studio partners and New Jersey film-lease partners in lieu of increasing the tax credits available for the respective category by the amount reallocated.**

(d) **Notwithstanding any provision at (b) above to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to N.J.A.C. 19:31-21.6(b), subsection b. of section 1 at P.L. 2018, c. 56 (N.J.S.A. 54:10A-5.39b), and subsection b. of section 2 at P.L. 2018, c.**

56 (N.J.S.A. 54A:4-12b) is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the Authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The Authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer pursuant to this section and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

19:31-[21.10]21.12 Affirmative action; and prevailing wage

(a) The Authority's affirmative action requirements, N.J.S.A. 34:1B-5.4, and prevailing wage requirements, N.J.S.A. 34:1B-5.1, shall apply to construction contracts at the production facility undertaken in connection with or as a condition of tax credits received under the Program. Nothing in this subsection shall be construed as requiring affirmative action or the payment of prevailing wages for construction commencing more than two years after the Authority has issued the first tax credits to the taxpayer.

(b) [The] In addition to the requirements at (a) above, the Authority's affirmative action requirements, N.J.S.A. 34:1B-5.4, and prevailing wage requirements, N.J.S.A. 34:1B-5.1, [will] shall apply to productions undertaken with financial assistance received under the Garden State Film and Digital Media Jobs Program.

#### 19:31-21.13 Appeals

(a) The Board's action 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 Authority's action by submitting, in writing, to the Authority, within 20 calendar days from the effective date of the Authority 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., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. Unless the application was submitted in response to a competitive application process, the Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.

4. Final decisions rendered by the Board shall be appealable to the Superior Court of New Jersey, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

19:31-[21.11]21.14 (No change in text.)