

5.1.c(1), these rules are readopted without amendment and shall continue in effect for a seven-year period.

TRANSPORTATION

(a)

MOTOR VEHICLE COMMISSION

Zone of Rate Freedom

Adopted Amendment: N.J.A.C. 16:53D-1.1

Proposed: June 6, 2022, at 54 N.J.R. 1013(a).

Adopted: August 29, 2022, by the Motor Vehicle Commission, Latrecia Littles-Floyd, Acting Chair and Chief Administrator.

Filed: August 29, 2022, as R.2022 d.126, **without change**.

Authority: N.J.S.A. 39:2-3, 39:2A-21, 39:2A-28, 48:4-2.21, and 48:4-2.25.

Effective Date: October 3, 2022.

Expiration Date: October 27, 2024.

Summary of Public Comments and Agency Responses:

No comments were received.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments are dictated by State statutes and are not subject to Federal requirements or standards.

Full text of the adoption follows:

SUBCHAPTER 1 GENERAL PROVISIONS

16:53D-1.1 General provisions

(a) Any regular route autobus carrier operating within the State, which carrier seeks to revise its rates, fares, or charges in effect as of the time of the promulgation of this rule, shall not be required to conform with N.J.A.C. 16:51-3.10, Tariff filings that do not propose increases in charges to customers, or 3.11, Tariff petitions that propose increases in charges to customers, provided the increase or decrease in the rate, fare, or charge, or the aggregate of increases and decreases in any single rate, fare, or charge is not more than the maximum percentage increase (10 percent for 2023) or decrease (10 percent for 2023), upgraded to the nearest \$.05.

1. For illustrative purposes, the following chart sets forth the 2023 percentage maximum for increases to particular rates, fares, or charges and the resultant amount as upgraded to the nearest \$.05:

(No change in table.)

2. For 2023 purposes, the following chart sets forth the 2023 percentage maximum for decreases to particular rates, fares, or charges and the resultant amount as upgraded to the nearest \$.05:

(No change in table.)

3. (No change.)

OTHER AGENCIES

(b)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs Emerge Program Rules

Adopted Amendments: N.J.A.C. 19:31-22.9 and 22.15

Proposed: January 18, 2022, at 54 N.J.R. 124(a) (see also 54 N.J.R. 900(a)).

Adopted: September 7, 2022, by the New Jersey Economic

Development Authority, Tim Sullivan, Chief Executive Officer.

Filed: September 8, 2022, as R.2022 d.128, with **substantial changes** to proposal after additional notice and public comment, pursuant to N.J.S.A. 52:14B-1; and with **non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: P.L. 2021, c. 160.

Effective Date: October 3, 2022.

Expiration Date: May 8, 2025.

Summary of Public Comment and Agency Response:

No public comments were received.

Summary of Agency-Initiated Changes:

The New Jersey Economic Development Authority (“NJEDA” or “Authority”) proposed amendments to the rules implementing the Emerge program pursuant to recently enacted statutory revisions at P.L. 2021, c. 160 (approved July 2, 2021), at 54 N.J.R. 124(a). The public comment period ended March 19, 2022. Subsequently, while adopting the majority of the original notice of proposal, the Authority proposed to make additional changes upon adoption to N.J.A.C. 19:31-22.9 and 22.15, at 54 N.J.R. 900(a). The public comment period for those changes ended on July 15, 2022. The changes being made upon adoption (as proposed on May 16, 2022) are as follows:

The original notice of proposal did not include language necessary to delineate the exception established at N.J.A.C. 19:31-22.9(a)2i. Specifically, language must be added to the original rulemaking to clarify, consistent with NJEDA’s rules and practice in similar prior programs, that a qualified business facility that consists of new construction has additional time to submit the required information pursuant to N.J.A.C. 19:31-22.9(a)2.

The prior rulemaking also included a provision regarding the relocation of a qualified business facility, which is unintentionally inconsistent with the Emerge statute. Specifically, N.J.S.A. 34:1B-344(c)1 provides that “an eligible business may change the location of the qualified business facility” if the relocation meets one of two criteria. In the original notice of proposal, at N.J.A.C. 19:31-22.15(b)1, the relocation is limited to before certification of the capital investment. This is not consistent with the statutory criteria that requires an analysis of cost and net positive economic benefit of the alternate proposed qualified business facility reflecting occupancy for the remaining duration of the commitment period. Thus, the relocation may occur during the commitment period, which occurs after the certification of the capital investment.

Additional changes are made upon adoption to update cross-references as noted:

N.J.A.C. 19:31-22.9(a) incorrectly cross-references subsection (i) and has been revised to appropriately refer to subsection (h). N.J.A.C. 19:31-22.9(b)6 cross-referenced N.J.A.C. 19:31-22.9(a)5 and has been revised to appropriately cross-reference N.J.A.C. 19:31-22.9(b)5. N.J.A.C. 19:31-22.9(b)9 incorrectly cross-referenced subsection (e) and has been revised to appropriately cross-reference subsection (d). In addition, N.J.A.C. 19:31-22.9(b)9 incorrectly cross-referenced N.J.A.C. 19:31-22.14(i) and has been revised to appropriately cross-reference N.J.A.C. 19:31-22.10(i). N.J.A.C. 19:31-22.9(c)1 incorrectly cross-referenced subparagraph (d)4ii and has been revised to appropriately cross-reference N.J.A.C. 19:31-22.9(c)6ii. N.J.A.C. 19:31-22.9(c)6i incorrectly cross-referenced N.J.A.C. 19:31-22.10(a)5 and has been revised to appropriately cross-reference N.J.A.C. 19:31-22.10(a)4.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments are not subject to any Federal requirements or standards.

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

SUBCHAPTER 22. EMERGE

19:31-22.9 Approval letter and commitment agreement

(a) Following approval by the Board, but before the issuance of tax credits, the Authority shall require an eligible business to execute and return an approval letter to the Authority. The Board's award of the credits will be subject to conditions subsequently set forth in the approval letter. The conditions in the approval letter must be met in order to retain the approval of the tax credits prior to their issuance and receipt by the business pursuant to **[(i)]** **[(h)]** below. Such conditions shall include, but not be limited to, the requirement to provide an estimated date of completion of the project; submission of periodic progress reports; submission of the information required **[(by)]** **[(at)]** (a)2 below; the requirement that the project complies with the prevailing wage requirements at P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3(b)8 and the Authority's affirmative action requirements pursuant to P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3; 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; and that the business submit a plan to meet the minimum environmental and sustainability standards.

1. (No change.)

2. Commencing with the date six months following the date the Authority and an eligible business execute the approval letter, the eligible business shall be required to demonstrate that it has obtained site plan approval for, as applicable, has committed financing for, as applicable, and has site control of, the qualified business facility in accordance with the time periods set forth in this paragraph, unless otherwise modified in the approval of the application by the Board.

i. Within the later of 12 months following the date of application approval by the Authority or six months following the date of execution of the approval letter, each approved business shall submit the information required at (a)2 above, except that a business shall have until the later of 24 months from the date of application approval or six months following the date of execution of the approval letter to submit such information **[(for a qualified business facility that consists of new construction)]**.

ii. (No change.)

(b) Upon satisfaction of the conditions in the approval letter, as determined by the Authority, the business shall execute a commitment agreement. The terms of the commitment agreement shall be consistent with the applicable eligibility requirements at section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3(b), (c), (d), and (e), and shall include, but shall not be limited to, the following:

1. (No change.)

2. For a phased project, a project phase agreement which for each phase identifies a description of the phase, the expected capital investment, and number of new full-time jobs, and the time following acceptance of the commitment agreement when each phase is to begin and be completed, with the awarding of tax credits under the commitment agreement to be predicated on the number of full-time jobs created through the fulfillment of each project phase agreement;

3.-5. (No change.)

6. A provision to permit the Authority to recapture all or part of any tax credits awarded, at its discretion, if the eligible business does not remain in compliance with **[(a)5]** **[(b)5]** above for the required term or significantly reduces the number of full-time employees, or the salaries or withholdings thereof, based on the amounts that result in forfeitures or reductions pursuant to N.J.A.C. 19:31-22.14(a), (b), and (c), to an amount less than the minimum jobs, salaries, or withholdings to which the eligible business certified at the commencement of the eligibility period, for two or more successive tax periods;

7. (No change.)

8. Representations that the eligible business is in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury or has entered into an agreement with the departments that includes a practical corrective action plan, and that the project complies with all applicable laws, and specifically, that the project does not violate any environmental law, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;

9. A provision permitting an audit of the payroll records of the business and any other evidence and documentation supporting the certifications pursuant to **[(e)]** **[(d)]** below, the annual reports pursuant to N.J.A.C. 19:31-22.10, and the addition of affiliates pursuant to N.J.A.C. 19:31-**[(22.14(i))]** **[(22.10(i))]** from time-to-time, as the Authority deems necessary;

10. A provision acknowledging the Authority's right to confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury that the eligible business and each contractor and subcontractor performing work at the qualified business facility is in substantial good standing, as defined at N.J.A.C. 19:31-22.7(c), or has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable; and that each contractor or subcontractor performing work at the qualified business facility is registered as required pursuant to the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;

11. A provision providing that if the eligible business is not in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury and has not entered into an agreement with the respective department, as set forth at N.J.A.C. 19:31-22.7(c), and has been given written notice thereof, including opportunity to be heard or to contest the determination, by the respective department, then the eligible business may forfeit the issuance of tax credits pending the resolution of the underlying violation(s) or other issues;

12.-21. (No change.)

(c) For a project whose total project cost equals or exceeds \$10 million, in addition to the commitment agreement, an eligible business shall execute a community benefits agreement or agreements pursuant to subsection b. of section 73 of P.L. 2020, c. 156, as prescribed below:

1. The business shall enter into a community benefits agreement with the Authority and the chief executive of the municipality or, if requested by the chief executive of the municipality, the chief executive of the county, in which the qualified business facility is located. If the municipality requests the county to enter into the agreement, the chief executive of the municipality must submit to the Authority a signed letter notifying the EDA that the municipality has made the request. The Authority shall not participate in negotiations between the eligible business and the municipality or county; however, the Authority shall review the agreement prior to the execution of the agreement to determine compliance with the requirements of this subsection including, but not limited to, a provision for mediation as required pursuant to **[(d)4ii]** **[(d)6ii]** below. The agreement may include, but shall not be limited to, requirements for training, employment, and youth development and free services to underserved communities in, and around, the community in which the qualified business facility is located.

2.-5. (No change.)

6. The community advisory committee shall produce an annual report, including an evaluation of whether the eligible business is in compliance with the terms of the community benefits agreement:

i. If the report from the community advisory committee and the certification from the eligible business pursuant to N.J.A.C. 19:31-**[(22.10(a)3)]** **[(22.10(a)4)]** both indicate that the eligible business is in compliance with the community benefits agreement, then the eligible business shall be in compliance with the community benefits agreement. Absent extenuating circumstances and the written approval of the Authority, if the community advisory committee does not timely submit the annual report, then the determination of compliance of the eligible business shall be based on the certification from the eligible business pursuant to N.J.A.C. 19:31-**[(22.10(a)3)]** **[(22.10(a)4)]**.

ii.-iii. (No change.)

7. (No change.)

8. An eligible business shall not be required to enter into a community benefits agreement pursuant to this subsection if the eligible business submits to the Authority a copy of the eligible business's approval letter from the Authority or a redevelopment agreement applicable to the

qualified business facility, provided that the approval letter or redevelopment agreement is certified by the chief executive of the municipality in which the project is located and includes provisions that meet or exceed the standards required for a community benefits agreement in this subsection, as determined by the Chief Executive Officer pursuant to rules adopted by the Authority.

(d) Upon completion of the capital investment and employment requirements of the program, an eligible business shall submit to the Authority certifications evidencing that the eligible business has satisfied the conditions of the program and the project agreement relating to the capital investment, employment, and other eligibility requirements, including, but not limited to, withholdings. If applicable, the certifications shall evidence that the eligible business has satisfied the requirements related to a mega project. The business must submit supporting evidence satisfactory to the Authority. Absent extenuating circumstances and the written approval of the Authority, the eligible business shall submit the certifications as described at (h) below within three years following the date of approval of the application. The Authority may grant two six-month extensions of the deadline. However, the date of certification shall not occur later than four years following the date of approval of the application. The Authority may grant one additional extension of no more than one year, taking the date of completion to five years past the date of approval of the application, but only if:

1.-2. (No change.)

(e)-(f) (No change.)

(g) In any submission required by the Authority pursuant to the approval letter or the certifications at (f) above, the chief executive officer of the eligible business, or an equivalent officer, shall certify that the information provided is true under the penalty of perjury.

(h) (No change.)

19:31-22.15 Effect of sale or lease of qualified facilities and relocation of qualified business facility

(a) (No change.)

(b) Except for a small business:

1. If the qualified business facility is sold in whole or in part during the eligibility period, the new owner shall not acquire the capital investment

of the seller, provided, however, that any tax credits of tenants shall remain unaffected. If the business merges or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner. The seller shall forfeit all tax credits for the tax period in which the sale occurs and all subsequent tax periods, provided, however, that an eligible business may change the location of the qualified business facility *[before certification of the capital investment]* if:

i. The new facility:

(1) (No change.)

(2) Does not meet all applicable location qualifying criteria or has less gross leasable area than the gross leasable area of the qualified business facility initially approved by the Authority, if the alternate qualified business facility meets the minimum capital investment and sustainability requirements of the program. The Authority shall require a cost comparison of the originally approved location and the alternate qualified business facility illustrating the economics of the occupancy at the alternate proposed qualified business facility location for the remaining duration of the commitment period compared to the economics of continuing occupancy at the qualified business facility proposed to be vacated. The alternate proposed qualified business facility must be 90 percent or more of the aggregate cost of the qualified business facility proposed to be vacated. If less than 90 percent, the Authority shall review the business's decision to relocate, including supporting documentation evidencing the reasons for relocation, to determine if the relocation to the alternate qualified business facility is consistent with the Board's approval of the application for the qualified business facility to be vacated. The Authority shall recalculate the net positive economic benefit of the project to reflect the economics of occupancy at the alternate proposed location for the remaining duration of the net positive economic benefit test period. The award of tax credits shall be reduced consistent with the variations in qualifying criteria for the alternate qualified business facility location, as well as in a manner consistent with the revised net positive economic benefit calculation.

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