

permitted dwelling units. Said percentage shall be established in consideration of the type of dwelling unit permitted, maximum permitted density, and the rate at which Pinelands Development Credits have been used in the municipality's Regional Growth Area as a whole;

[ii.] iii. [Increasing or decreasing] **Decreasing** by as much as 10 percent the total number of dwelling units assigned pursuant to (a)1 above[,]; provided that the Pinelands Development Credit program requirements set forth [in] at (a)3 above are met relative to the adjusted dwelling unit total and provided further that the adjustment is consistent with land tenure patterns, the character of portions of the regional growth area, the provision of infrastructure and community services, and the natural resource characteristics of the area; or

[iii.] iv. Decreasing the total number of dwelling units assigned pursuant to (a)1 above to a density of no less [that] **than** 2.5 units per acre of developable land[,]; provided that **any such decrease is certified by the Commission pursuant to N.J.A.C. 7:50-3 as of (the effective date of this rulemaking) and:**

- (1)-(3) (No change.)
- 8. (No change.)
- (b) (No change.)

7:50-5.43 Pinelands Development Credits established

(a) Except for land which is owned by a public agency on January 14, 1981, land [which] **that** is thereafter purchased by the State for conservation purposes, land [which] **that** is subject to an easement limiting the use of land to [nonresidential] **non-residential** uses or land otherwise excluded from entitlement pursuant to (b) below, every parcel of land in the Preservation Area District, an Agricultural Production Area, or a Special Agricultural Production Area shall have a use right known as "Pinelands Development Credits" that can be used [to secure a density bonus for lands located] **for development** in Regional Growth Areas **and in accordance with N.J.A.C. 7:50-4.62(d), 5.27(c), and 5.32(b).**

(b) Pinelands Development Credits are hereby established at the following ratios:

- 1.-4. (No change.)
- 5. Pinelands Development Credit allocations [exceeding one-quarter of a Pinelands Development Credit] shall be rounded to the nearest one-quarter of a Credit, **with the exception of any such allocation that totals less than 0.125 Pinelands Development Credits, unless the standards at (b)6 or 7 below are met.**
- 6.-8. (No change.)
- (c) (No change.)

7:50-5.46 Aggregation of Pinelands Development Credits

Pinelands Development Credits may be aggregated from different parcels for use in [securing a bonus for a single parcel of land in a Regional Growth Area, provided that the density does not exceed the limits of the density range specified in the municipal district in which the parcel is located] **accordance with N.J.A.C. 7:50-5.43(a).**

7:50-5.47 Recordation of deed restriction

- (a) (No change.)
- (b) Such deed restriction shall specify the number of Pinelands Development Credits [sold] **allocated** and that the parcel may only be used in perpetuity for the following uses:
- 1.-4. (No change.)
- (c) (No change.)

SUBCHAPTER 10. PILOT PROGRAMS

7:50-10.22 General standards

(a) Alternate design pilot program treatment systems shall be authorized for residential use in all municipalities; provided that the following standards are met:

- 1.-4. (No change.)
- 5. Conditions for **the** use of alternate design pilot program treatment systems are as follows:
- i.-viii. (No change.)
- ix. The property owner shall record, with the deed to the property, a notice consistent with the sample deed notice approved pursuant to (a)2vi above that identifies the technology, acknowledges the owner's

responsibility to operate and maintain it in accordance with the manual required at [(a)2vi] **(a)2iv** above, and grants access, with reasonable notice, to the local board of health, the Commission, and its agents for inspection and monitoring purposes. The recorded deed shall run with the property and shall ensure that the maintenance requirements are binding on any owner of the property during the life of the system and that the monitoring requirements are binding on any owner of the property during the time period the monitoring requirements apply pursuant to this pilot program or any subsequent rules adopted by the Commission that apply to said system;

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

OTHER AGENCIES

(a)

ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Garden State Film and Digital Media Jobs Program

Proposed Readoption of Specially Adopted Amendments with Substantial Changes: N.J.A.C. 19:31T-1.1 through 1.7, 1.10, 1.11, 1.12, and 1.14

Proposed Readoption of Specially Adopted New Rules with Substantial Changes: N.J.A.C. 19:31T-1.8, 1.9, and 1.13

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, P.L. 2021, c. 367, P.L. 2023, c. 97, and P.L. 2024, c. 33.

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

Proposal Number: PRN 2025-066.

Submit written comments by August 15, 2025, to:

Alyson Jones, Managing Director of Legislative and Regulatory Affairs
New Jersey Economic Development Authority
PO Box 990
Trenton, NJ 08625-0990
Alyson.Jones@njeda.gov

Take notice that in accordance with P.L. 2019, c. 506, P.L. 2020, c. 156, P.L. 2021, c. 160, P.L. 2021, c. 367, P.L. 2023, c. 97, and P.L. 2024, c. 33, the New Jersey Economic Development Authority ("NJEDA" or "Authority") is proposing to readopt the specially adopted amendments and new rules and proposing substantial changes to implement the provisions of the Garden State Film and Digital Media Jobs Act, N.J.S.A. 54:10A-5.39b and 54A:4-12b.

The specially adopted amendments and new rules became effective on February 26, 2024, upon acceptance for filing by the Office of Administrative Law (OAL). The specially adopted amendments and new rules were to be effective for a period not to exceed 180 days from the date of filing, that is, until August 26, 2024. Concurrently, the amendments and new rules were proposed for amendment in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. As the NJEDA filed the original notice of readoption before August 26, 2024, the expiration date was extended 180 days to February 22, 2025, pursuant to N.J.S.A. 52:14B-5.1.c. The concurrently proposed amendments and new rules would have become effective and permanent upon notice of adoption if filed on or before February 22, 2025. See N.J.A.C. 1:30-6.4(f).

On February 22, 2025, Governor Murphy extended the expiration date of the specially adopted amendments and new rules for one year. The new expiration date is February 22, 2026. See 57 N.J.R. 388(a). The notice of concurrent proposal expired on April 1, 2025, pursuant to N.J.A.C. 1:30-6.4. The Authority is now proposing to readopt the specially adopted

amendments and new rules with significant changes pursuant to P.L. 2024, c. 33, which has no bearing on the expiration date of the Gubernatorially extended specially adopted amendments and new rules. The proposed readopted specially adopted amendments and new rules with substantial changes will become effective and permanent upon notice of adoption, if filed on or before February 22, 2026. See N.J.A.C. 1:30-6.4(f).

The proposed readoption of the specially adopted amendments and new rules with substantial changes follows:

Summary

The Garden State Film and Digital Media Jobs Act, 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 act is to incentivize production companies to film and create digital media content in New Jersey.

The New Jersey Economic Development Authority is incorporating provisions of recent statutory revisions, pursuant to P.L. 2019, c. 506, P.L. 2020, c. 156, P.L. 2021, c. 160, P.L. 2021, c. 367, P.L. 2023, c. 97, and P.L. 2024, c. 33, as well as industry and stakeholder input received through prior rulemakings into the existing rules.

Summary of the Rulemaking and Legislative History

The Film Tax Credit Program was first created in 2005 pursuant to P.L. 2005, c. 345, and codified at N.J.S.A. 54:10A-5.39 and 54A:4-12. Since that time, it has been repeatedly amended, sunsetted, and reinstated in 2018 at P.L. 2018, c. 56, as the Garden State Film and Digital Media Jobs Act, and recodified at N.J.S.A. 54:10A-5.39b and 54A:4-12b, and significantly amended in the New Jersey Economic Recovery Act of 2020 (ERA), P.L. 2020, c. 156, as amended at P.L. 2021, c. 160, and additional bills.

On August 1, 2022, the NJEDA published proposed amendments and new rules for the Garden State Film and Digital Media Jobs Program (Program) rules, pursuant to P.L. 2019, c. 506, P.L. 2020, c. 156, P.L. 2021, c. 160, and P.L. 2021, c. 367, in the New Jersey Register. See 54 N.J.R. 1530(a). As summarized below, significant public comments were received.

Thereafter, legislative changes were enacted. On July 6, 2023, Governor Murphy signed P.L. 2023, c. 97, into law. This new law modified the Garden State Film and Digital Media Program in various ways, including:

- extending the privilege period through 2039 and increasing the amount of tax credits available;
- replacing the concept of “film-lease partners” with a new concept of “film-lease production companies” and creating the concept of a “film-lease partner facility”;
- expanding the definitions of “film” and “qualified film production expenses,” adding definitions of “commitment period” and “eligibility period,” and amending the definitions of “film” and “studio partner,” and “full-time or full-time equivalent employee”;
- enumerating certain rescind and recapture penalties for “studio partners”;
- revising requirements related to the diversity plan credit;
- making certain changes to deferred compensation payments; and
- clarifying provisions related to filming at a personal residence.

In addition, P.L. 2023, c. 97, authorized the NJEDA to specially adopt rules to be immediately effective for a period not to exceed 180 days from the date of the filing. The August 1, 2022, notice of proposal was superseded by P.L. 2023, c. 97, and allowed to expire.

The NJEDA filed the specially adopted and concurrently proposed amendments and new rules for the Program on February 26, 2024, which were published in the April 1, 2024 New Jersey Register. See 56 N.J.R. 491(a). As summarized below, significant public comments were again received.

Meanwhile, N.J.A.C. 19:31, Authority Assistance Programs, was recodified and readopted effective March 27, 2024. As a part of the readoption, the Program rules, then-codified at N.J.A.C. 19:31-21 were recodified to N.J.A.C. 19:31T, with attendant technical updates to the rule

text concerning cross-references, agency names, addresses, etc., effective May 6, 2024.

Thereafter, additional legislative changes were enacted. Governor Murphy signed S3275 into law as P.L. 2024, c. 33, on July 10, 2024. Chapter 33 modified the ERA at N.J.S.A. 34:1B-362 to make up to \$300,000,000 in unused tax credits pursuant to the Authority-administered Aspire and Emerge Programs available in State Fiscal Year 2025 to the Garden State Film and Digital Media Jobs Program and to make tax credits available to taxpayers other than New Jersey studio partners and New Jersey film-lease production companies. The new law also modified the Garden State Film and Digital Media Program in various ways including, but not limited to:

- Expanding the tax credit qualifying expenses to include film production expenses for certain qualifying reality shows;
- Excluding qualified wage and salary payments made to full-time employees working on digital media from tax credit qualifying expenses;
- Allowing certain post-production expenses to qualify for tax credits;
- Requiring tax credit application approval even when the Program is oversubscribed;
- Expanding the scope of qualified film production expenses and qualified digital media content production expenses to include wage and salary expenses (including those paid to “loan out companies”) for workers who are not subject to New Jersey gross income taxes due to tax reciprocity with another state;
- Adding a new definition for “independent post-production company”;
- Expanding the definitions of “digital media content,” “highly compensated individual,” “incurred in New Jersey,” “New Jersey film-lease production company,” “New Jersey studio partner,” and “qualified digital media content production expenses”;
- Limiting the definition of “loan out company” to require such companies to be authorized to do business in New Jersey;
- Revising the definition of “film” to change the exception which permits a reality show to be considered a “film”;
- Amending certain diversity plan provisions; and
- Extending the deadline for the qualifying expense period to July 1, 2034.

This proposed readoption incorporates the P.L. 2024, c. 33 changes, as well as comments received in response to the February 26, 2024 special adoption.

Summary of Public Comments and Agency Responses in Response to the August 1, 2022, Notice of Proposal at 54 N.J.R. 1530(a):

In response to the August 1, 2022, notice of proposal at 54 N.J.R. 1530(a), the Authority received comments from Kathy Banuelos, Senior Vice President, State Government Affairs, Motion Picture Association; John C. Biggins, Executive Managing Director, Biggins Lacy Shapiro and Company, LLC; Jason Hariton, EVP & Chief Real Estate Officer, MBS Group; Nick Maniatis, Director Studio and Production Affairs—North America; Christine Cascio Peluso, Esq., Tax Credits US, and Fred Siegel, CPA.

1. COMMENT: The commenter requested that the Authority expedite approvals of initial applications, specifically related to tax clearance and good standing determinations.

RESPONSE: The Authority is determined to complete reviews as expeditiously as possible; however, the Authority obtains tax clearances from every applicant to determine that applicants are in good standing with the New Jersey Department of Labor and Workforce Development, the New Jersey Department of the Treasury, and the New Jersey Department of Environmental Protection.

2. COMMENT: The commenter indicated that the requirements that the construction at the production facility comply with the prevailing wage and affirmative action requirements should only apply to the work performed by the studio partner and not its landlord or potential landlord pursuant to an executed lease or lease term sheet.

RESPONSE: Revised N.J.A.C. 19:31-21.12 sets forth that, for studio partners and film-lease partner facilities, the Authority’s affirmative action requirements at N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3, and prevailing wage requirements at N.J.S.A. 34:1B-5.1 and N.J.A.C. 19:30-

4 shall apply to work performed at the production facility after the Authority's approval of the designation.

3. COMMENT: Several of the commenters inquired as to the necessity of the publication of certain information related to tax credit transfers.

RESPONSE: The requirement is amended as part of the rulemaking at N.J.A.C. 19:31-21.10(e).

4. COMMENT: The commenter requested removal of the requirement that the information provided by the taxpayer pursuant to N.J.A.C. 19:31-21.4 be submitted with a certification that it is true, as the information may include a discrepancy between what is truthfully submitted and what is ultimately approved by the Authority.

RESPONSE: Information provided to the Authority regarding eligible costs that is thought to be true at the time of submittal, but is subsequently deemed ineligible by the Authority, would not be considered untruthful.

5. COMMENT: The commenter requested an expansion of the list of executives qualified to provide the report required pursuant to N.J.A.C. 19:31-21.4. The commenter also indicated that the information the Authority requires regarding estimates of future production activities will be projections only and may be subject to change.

RESPONSE: This requirement has been removed as part of the rulemaking.

6. COMMENT: The commenter suggested clarifying the definition of "qualified film production expenses" at N.J.A.C. 19:31-21.2.

RESPONSE: The Authority agrees with this comment and has clarified the definition of "qualified film production expenses," as suggested by the commenter, in the rulemaking.

7. COMMENT: The commenter requested an amendment to the rules to expand the definition of "combined group."

RESPONSE: "Combined group" is a defined term utilized in other programs and by other State agencies; therefore, its meaning will not be changed for this Program.

8. COMMENT: The commenter requested timely processing of applications for the studio partner designation.

RESPONSE: The Authority processes applications in as timely a manner as possible on a first-in-time basis. The Authority may institute a competitive process if interest in the studio partner designation so warrants.

9. COMMENT: The commenter requested an amendment to the definition of "studio partner" to expand the designation to those other than content creators.

RESPONSE: The Authority is bound by the statutory definition of "studio partner" at N.J.S.A. 54:10A-5.39b.h and 54A:4-12b.h.

10. COMMENT: The commenter requested additional time to satisfy the requirements of the studio partner designations beyond the 36-month time period in addition to the potential for two six-month extensions.

RESPONSE: The Authority has determined that the time period set forth at N.J.A.C. 19:31-21.8 is sufficient to satisfy the requirements of the studio partner designations. There are a limited number of designations and the timeframes set forth at N.J.A.C. 19:31-21.8 are necessary to ensure that the studio partner designations are utilized, and construction of production facilities is completed in a timely manner.

11. COMMENT: The commenter suggested an amendment to the requirement that the studio partner remain in compliance with the award agreement, including maintaining minimum site control of the facility as a result of sale, sublicense, and/or sublease of the facility.

RESPONSE: The requirement to maintain the minimum site control pursuant to the award agreement is necessary to ensure that the applicant can fulfill the requirements of the Program throughout the commitment period. The minimum site control requirement does not wholly prohibit the sale, sublicense, or sublease of the facility. However, to be eligible for, and remain in compliance with, the designation, any modifications of site control will require the prior consent and approval of the Authority. A studio partner may sublease in certain circumstances pursuant to N.J.A.C. 19:31-21.8(h)2.

12. COMMENT: The commenter requested that the Authority add "an executed lease term sheet" in addition to ownership or a lease.

RESPONSE: The Authority requires a completed application to be designated as a studio partner to include an executed deed, lease, sublease, purchase contract for the production facility, or letter of intent with a governmental authority for the purchase of property for the purpose of

developing a production facility. The executed lease or sublease shall have a term that extends for the commitment period based on the anticipated commencement of the commitment period. See N.J.A.C. 19:31-21.4(b)1.

13. COMMENT: The commenter requested that the Authority accept a letter of intent in lieu of the required lease required at N.J.A.C. 19:31-21.2.

RESPONSE: Due to the limited number of designations, the Authority requires more substantial evidence of a commitment than a letter of intent; however, a lease with contingencies is acceptable. Site control by a studio partner applicant is required.

14. COMMENT: The commenter inquired as to the commencement of the commitment period and the requirement to maintain site control throughout the commitment period as evidenced by a lease for the appropriate time frame.

RESPONSE: "Commitment period" is defined by statute at N.J.S.A. 54:10A-5.39b.h and 54A:4-12b.h. The commencement of the "commitment period" is clarified in this rulemaking, see N.J.A.C. 19:31-21.2.

15. COMMENT: The commenter requested amendment to the application of the Columbus Circle 30-mile radius tax credit reduction at N.J.A.C. 19:31-21.4.

RESPONSE: The Authority is bound by the statutory requirement to apply the Columbus Circle 30-mile radius tax credit reduction found at N.J.S.A. 54A:4-12b.a(2) and 54:10A-5.39b.a(2).

16. COMMENT: The commenters asked for clarification of the reduction provisions for film-lease partners and, specifically, the impact of non-compliance with the requirement to expend the minimum annual average of qualified film production expenses at N.J.A.C. 19:31-21.2.

RESPONSE: This is removed as part of the rulemaking pursuant to statutory amendments.

17. COMMENT: The commenter requested clarification on the determination of the completion of a film.

RESPONSE: The completion of a film is conditioned upon the approval of the New Jersey Motion Picture and Television Commission (Commission). The Commission is required to take into account factors including, but not limited to, the budget and audience of the film, marketing materials promoting the State as a film and entertainment production destination, placement of a "Filmed in New Jersey" or "Produced in New Jersey" statement, or an appropriate logo approved by the Commission in the end credits of the film. See N.J.A.C. 19:31-21.3(a)3 and N.J.S.A. 54:10A-5.39b.a(1)(c) and 54A:4-12b.a(1)(c).

18. COMMENT: The commenter requested clarification of the meaning of "authorized to do business in New Jersey."

RESPONSE: The term "vendor authorized to do business in New Jersey" is amended by the rulemaking. See N.J.A.C. 19:31-21.2 and N.J.S.A. 54A:4-12b.h and 54:10A-5.39b.h.

19. COMMENT: The commenter requested clarification of what costs may be "incurred in New Jersey," specifically related to real property and intangible property when included in qualified film production expenses.

RESPONSE: The terms "incurred in New Jersey," "homeowner," and "personal residence" are added and/or amended by the rulemaking to clarify the inclusion of certain real property and exclusion of intangible property at N.J.A.C. 19:31-21.2. See N.J.S.A. 54A:4-12b.h and 54:10A-5.39b.h.

20. COMMENT: The commenter requested an expedited qualification of certified public accountants pursuant to N.J.A.C. 19:31-21.7(d).

RESPONSE: The Authority is currently developing this process, which is beyond the scope of the Program rules.

21. COMMENT: The commenter requested that the Authority amend the certification requirement of the certified public accountant report required to be submitted upon application for film tax credits pursuant to N.J.A.C. 19:31-21.7(c)6.

RESPONSE: The Authority requires that the information provided in the certified public accountants report be certified to ensure the truthfulness and accuracy of the information.

22. COMMENT: The commenter requested the publication of the currently available tax credit funding pursuant to the Program.

RESPONSE: The Authority publishes this information quarterly on the Authority's website. Authority staff are able to provide more frequent updates to this information upon request.

23. COMMENT: The commenter requested confirmation of the amount of funding available to studio partners pursuant to the Program beginning in 2025 pursuant to N.J.A.C. 19:31-21.11.

RESPONSE: The caps on funding are amended in the rulemaking pursuant to statutory amendment at N.J.S.A. 34:1B-362. The Authority publishes this information quarterly on the Authority's website. Authority staff are able to provide more frequent updates to this information upon request.

24. COMMENT: The commenters objected to the fee amounts of the Program, as established at N.J.A.C. 19:31-21.5.

RESPONSE: The Authority has amended N.J.A.C. 19:31-21.5 to reduce fees while still offsetting the cost to the Authority of administering the Program.

25. COMMENT: The commenter requested clarification as to whether certain services performed within the 30-mile radius described at N.J.A.C. 19:31-21.6(a)2 that are qualified production expenses qualify for a credit rate of 35 or 30 percent.

RESPONSE: Qualified wage and salary payments made to a loan out company or an independent contractor providing services used directly in a production and qualified wages of W-2 employees are not included in the reduction to 30 percent and are eligible to receive 35 percent, as long as they are incurred in New Jersey.

26. COMMENT: The commenter requested that the Authority clarify and distinguish the meaning of "non-payroll expenses" and "qualified wages."

RESPONSE: "Non-payroll expense" includes expenses outside of compensation. "Qualified wages" includes all wages subject to New Jersey gross income tax, including payments made to loan out companies and independent contractors performing services directly related to the production.

Summary of Public Comments and Agency Responses in Response to the February 26, 2024, Special Adoption at 56 N.J.R. 491(a):

In response to the specially adopted and concurrently proposed amendments and new rules filed on February 26, 2024, at 56 N.J.R. 491(a), the Authority received comments from the Motion Picture Association (MPA), the Screen Alliance of New Jersey (SANJ), and Fred Siegel, CPA.

27. COMMENT: Commenters requested modifications to the definition of "Incurred in New Jersey" to remove "at the Authority's discretion" and to add "intangible property" and "real property." A commenter also requested that the Authority amend the definition to specify "the form and manner" in which a film production company may provide vendor information to the Authority when such information is required to establish that "rented tangible property" is "used and consumed in New Jersey."

RESPONSE: P.L. 2024, c. 33 (S3275) makes the submission of vendor information mandatory in order for rented tangible property expenses to be considered "used or consumed in New Jersey." As such, the Authority is amending this definition to remove "at the Authority's discretion" in order to be consistent with Chapter 33. As for the remaining requests, the Authority is bound by the definition of "incurred in New Jersey" set forth at N.J.S.A. 54A:4-12b and 54:10A-5.39b.

28. COMMENT: A commenter requested that the Authority remove "and occupies" from the definition of "homeowner." Another commenter requested clarification of the meaning of "or otherwise" as used in the definition of "homeowner."

RESPONSE: The Authority will clarify the use of "homeowner" in the guidance published on the NJEDA's website. The definition provided in the rules for this term is consistent with applicable statutes.

29. COMMENT: A commenter requested that the Authority remove "and a residential unit that another person occupies as that person's primary residence" from the definition of "personal residence." Another commenter asked for clarification of the definition of "personal residence."

RESPONSE: The intent of the addition of the definition of "personal residence" in the rules is to provide relief from filing requirements where the homeowner is not a registered business. The Authority is satisfied that the definition provided in the rules for this term is consistent with applicable statutes.

30. COMMENT: Commenters requested that the Authority modify the definition of "qualified film production expenses" and add a definition for "intangible personal expenses" (as used in the definitions of "qualified film production expenses" and "total film production expenses") to the rules.

RESPONSE: The Authority is bound by the definitions of "qualified film production expenses" set forth at N.J.S.A. 54A:4-12b and 54:10A-5.39b. However, to address the commenters' concerns, the Authority is replacing "intangible personal expenses" with "intangible personal property" in the definitions of "qualified film production expenses" and "qualified digital media content production expenses."

31. COMMENT: A commenter requested clarification on what sort of marketing materials would be sufficient to satisfy N.J.A.C. 19:31T-1.3(a)3 and how the Authority will determine whether it is appropriate to include references or logos indicating the production was filmed or produced in New Jersey.

RESPONSE: The commenter's request is beyond the scope of the rulemaking, which does not include changes at N.J.A.C. 19:31T-1.3(a)3. The New Jersey Motion Picture and Television Commission determines the propriety of marketing materials.

32. COMMENT: A commenter sought to amend the application submission requirements to eliminate the need for counsel to review New Jersey studio partner and film-lease production company contracts for compliance purposes.

RESPONSE: P.L. 2024, c. 33 (S3275) removed the requirement that a "New Jersey studio partner" hold the copyright to "works made for hire," thereby eliminating the need for counsel to review New Jersey studio partner contracts. The rules are being updated accordingly. As for the remainder of commenter's request, the Authority has determined that the opinion of counsel is necessary to ensure that the applicant is compliant with Program requirements. This provision appropriately safeguards the Program and the public trust.

33. COMMENT: A commenter requested the deletion of a provision allowing the Authority to request any information it deems necessary, or clarification of that provision to explain what other items the Authority can request.

RESPONSE: The Authority generally includes this language in all of its rules and reserves the right to request information as needed on a case-by-case basis. This provision appropriately safeguards the Program and the public trust.

34. COMMENT: A commenter requested reconsideration and reduction of the Program fee schedule.

RESPONSE: The Authority reduced and restructured fees in the specially adopted and concurrently proposed new rules and amendments that were effective February 26, 2024. The fees are necessary to offset the cost to the Authority of administering the Program. The Authority's reduction of fees was recently the subject of an audit by the State Auditor.

35. COMMENT: A commenter requested an adjustment to the Program rules, such that no additional information regarding steps taken to achieve diversity hiring objectives is required for applicants that meet the 25 percent diversity threshold.

RESPONSE: The Authority has reviewed its process related to achieving the statutorily established diversity hiring objectives and determined the current rule is appropriate. This provision appropriately safeguards the Program and the public trust.

36. COMMENT: A commenter requested a list of acceptable proofs of residency.

RESPONSE: The Authority will update the guidance published on the Authority's website to provide more information on acceptable proofs of residency.

37. COMMENT: A commenter sought to cap third-party consultant fees at \$1,000.

RESPONSE: The Authority is making efforts to keep applicant costs down. However, the current fees are necessary to offset the cost to the Authority of administering the Program. The Authority's fees were recently the subject of an audit by the State Auditor.

38. COMMENT: A commenter requested that the Authority modify the evaluation process for a tax credit to include a term sheet or letter of intent to occupy as evidence of occupying production space in a film-lease partner facility.

RESPONSE: N.J.S.A. 54:10A-5.39b.e(1) and 54A:4-12b.f(1) require an applicant to lease or otherwise occupy the production facility for the duration of the commitment period. While the Authority permits applicants to submit letters of intent to occupy production space in the program application, the applicant must ultimately prove that it did legally occupy production space prior to receiving a tax credit. This provision appropriately safeguards the Program and the public trust.

39. COMMENT: A commenter requested that the Authority strike “but not be limited to,” from the description of conditions that may be included in the Authority’s approval letter.

RESPONSE: This language is generally found in all of the Authority’s program rules and allows the Authority necessary flexibility to adjust to changing circumstances.

40. COMMENT: A commenter requested modification of language allowing the Authority to unilaterally amend its award agreement to state that any amendment must be mutually agreed to.

RESPONSE: This language is standard in Authority award agreements and provides the necessary flexibility to adjust to changing circumstances.

41. COMMENT: A commenter requested modification of N.J.A.C. 19:31T-1.9(a) to state that in the event the studio partner fails to occupy the production facility as required “... the Authority may revoke the designation of the studio partner” instead of stating “the Authority shall revoke ...” to mirror the statutory definition of “new jersey studio partner.”

RESPONSE: The existing rule language provides clear notice to the applicant of the Authority’s intention to exercise its statutorily authorized discretion and revoke the “New Jersey studio partner” designation in this situation.

42. COMMENT: A commenter requested deletion of “and all films from film-lease production companies that relied on the film-lease partner facility designation for which an initial approval has been given, but for which the Authority has not given final approval, shall terminate” from N.J.A.C. 19:31T-1.9(b) stating that if the Authority has granted an initial approval, and a company that otherwise meets the criteria provided in the statute relied on the approval to commence production, then the current production’s film-lease company designation should not terminate.

RESPONSE: The Authority is bound by N.J.S.A. 54:10A-5.39b.e(1), which requires the Authority to create recapture provisions. This provision appropriately safeguards the Program and the public trust.

43. COMMENT: Commenters argued that the prevailing wage should not generally apply to all “work performed at the production facility” or to qualified expenses for film production or digital media content production as required pursuant to N.J.A.C. 19:31T-1.12 because this application is beyond the scope of N.J.S.A. 34:1B-5.1.

RESPONSE: The Authority agrees that the prevailing wage does not apply to all “work performed at the production facility” or to qualified expenses for film production or digital media content production. N.J.S.A. 34:1B-5.1(b) provides that the NJEDA “shall adopt rules and regulations requiring that not less than the prevailing wage rate be paid to workers employed in the performance of any contract, for construction, demolition, remediation, removal of hazardous substances, alteration, custom fabrication, repair work, or maintenance work, including painting and decorating, or excavation, grading, pile driving, concrete form, or other types of foundation work...” Consequently, prevailing wage requirements apply to contracted work performed at a production facility and qualified expenses for film production or digital media content production if such work falls within the prevailing wage categories cited above. The Authority has inserted “construction contracts for” at N.J.A.C. 19:31T-1.12(b) to clarify this position.

44. COMMENT: A commenter expressed a belief that the new definition for “film lease production company” at N.J.A.C. 19:31T-1.2 puts this part of the Program out of reach for most current New Jersey companies.

RESPONSE: The Authority is bound by the new statutory definition of “New Jersey film-lease production company” at P.L. 2024, c. 33 (S3275), which is consistent with N.J.A.C. 19:31T-1.2.

45. COMMENT: A commenter sought clarification of the definition of “film” and asks for incorporation of industry jargon. The commenter also seeks clarification on whether certain content is considered a “television show.”

RESPONSE: The Authority is bound by the statutory definitions at N.J.S.A. 54A:4-12b and 54:10A-5.39b. However, a new definition for “television series” has been added to provide clarification.

46. COMMENT: A commenter requested that the term “documentary feature film” be changed to “documentary film” to conform with industry jargon.

RESPONSE: The Authority is satisfied with the term “documentary feature film” because it delineates the length of a qualifying documentary.

47. COMMENT: A commenter asked for specifics on what constitutes a “loan out company” and whether the names or job positions of all personnel have to be stated in the contract with a “loan out company.”

RESPONSE: The Authority is satisfied with the definition of “loan out company” at N.J.A.C. 19:31T-1.2. To qualify payments to a loan out company, evidence of individual gross income tax withholding is required.

48. COMMENT: A commenter sought a more specific explanation of the term “ancillary contractor services” and how it differs from a “loan out company.”

RESPONSE: N.J.A.C. 19:31T-1.2, Definitions, distinguishes the services provided by a “loan out company” from “ancillary contractor services.” Specifically, the definition for “loan out company” states that a loan out company provides “specified individual personnel such as artists, crew, actors, producers or directors for the performance of services used directly in a production.” The definitions further provide that “ancillary contractor services” means services, such as “catering, construction, trailers, equipment, or transportation.”

49. COMMENT: A commenter requested an amendment to the definition of “principal photography” to state that the filming of major and significant portions of a qualified film can involve the director of photography or the cinematographer, not just the director of the film on set.

RESPONSE: The Authority is satisfied with this definition, which was drafted in consultation with the New Jersey Motion Picture and Television Commission.

Summary of the February 26, 2024 Specially Adopted Amendments and New Rules

N.J.A.C. 19:31-21.1 (Recodified at N.J.A.C. 19:31T-1.1) Applicability and Scope

The specially adopted amendments revise this section to include citations to statutory revisions to the Garden State Film and Digital Media Jobs Act.

N.J.A.C. 19:31-21.2 (Recodified at N.J.A.C. 19:31T-1.2) Definitions

The specially adopted amendments define certain new terms used in this subchapter, and incorporate terms defined at P.L. 2020, c. 156; P.L. 2021, c. 160; P.L. 2021, c. 367; and P.L. 2023, c. 97. Specifically, the following terms are amended to support the Program: “Commission,” “digital media content,” “film,” “full-time or full-time equivalent employee,” “highly compensated individual,” “independent contractor,” “loan out company,” “primary place of business,” “principal photography,” “qualified digital media content production expenses,” “qualified film production expenses,” “selling business,” “taxable year,” “tax credit transfer certificate,” “tax credit vintage year,” “total digital media content production expenses,” “total film production expenses,” and “vendor authorized to do business in New Jersey.” The amendments also create additional terms, including: “applicant,” “approved applicant,” “commitment period,” “deferred compensation,” “eligibility period,” “film production uses,” “homeowner,” “incurred in New Jersey,” “New Jersey film-lease partner facility” or “film-lease partner facility,” “New Jersey film-lease production company” or “film-lease production company,” “New Jersey studio partner or studio partner,” “personal residence,” “production facility,” “reality show,” “shoot day,” “square feet,” and “taxpayer.”

N.J.A.C. 19:31-21.3 (Recodified at N.J.A.C. 19:31T-1.3) Eligibility Criteria

N.J.A.C. 19:31T-1.3, which outlines the criteria for a taxpayer to be eligible for the Program, is revised as follows:

N.J.A.C. 19:31T-1.3(a) and (a)1 are amended to add the term “applicant” and remove the term “taxpayer” and clarify the eligibility of

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wages and salaries in the calculation of total film production expenses and qualified film production expenses.

N.J.A.C. 19:31T-1.3(a)2 is amended to clarify that the requirement to commencement of principal photography must occur within 180 days from the date of the completed application.

N.J.A.C. 19:31T-1.3(a)4 is amended to include the term “applicant” and remove the term “taxpayer.”

N.J.A.C. 19:31T-1.3(a)5 is amended to include the terms “applicant” and “homeowner” and remove the term “taxpayer.”

N.J.A.C. 19:31T-1.3(a)6 is added to require that at least one principal photography day is shot within New Jersey.

N.J.A.C. 19:31T-1.3(a)7 is added to require that, for a studio partner or film-lease production company, the principal photography of the film must commence after the designation of the studio partner or the corresponding film-lease partner facility.

N.J.A.C. 19:31T-1.3(b) and (b)1 and 2 are amended for clarity to add the term “applicant” and remove the term “taxpayer.”

N.J.A.C. 19:31T-1.3(c) is amended to include the title of the New Jersey Gross Income Tax Act; and add the terms “approved applicant,” “applicant,” “homeowner,” and “personal residence,” as well as to remove the term “taxpayer.”

N.J.A.C. 19:31T-1.3(d) is added to set forth the application and eligibility requirements to be designated as a studio partner and provides that no more than three film production companies may be designated as a studio partner.

N.J.A.C. 19:31T-1.3(e) is added to set forth the application and eligibility requirements to be designated as a film-lease partner facility.

N.J.A.C. 19:31T-1.3(e)1 sets forth that, with certain exceptions, in order for a production facility to be designated as a film-lease partner facility, the owner or developer shall accept the acquisition by the Authority of equity in the production facility.

N.J.A.C. 19:31T-1.3(e)2 sets forth that no more than three New Jersey production facilities may be designated as a film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or portions thereof, owned, built, leased, or operated by a film production company designated as a studio partner.

N.J.A.C. 19:31T-1.3(f) is added to set forth the application and eligibility requirements for a reality show.

N.J.A.C. 19:31T-1.3(g) is added to provide that for two or more buildings to qualify as a production facility, the buildings must be proximate to each other. N.J.A.C. 19:31T-1.3(g)1, 2, and 3 set forth examples of buildings that are proximate.

N.J.A.C. 19:31-21.4 (Recodified at N.J.A.C. 19:31T-1.4) Application Submission Requirements

N.J.A.C. 19:31T-1.4(a) is amended to remove the wording “, but not limited to, the following.”

N.J.A.C. 19:31T-1.4(a)4 is amended to differentiate the required breakout of projected costs for applications filed before July 2, 2021, versus on or after July 2, 2021.

N.J.A.C. 19:31T-1.4(a)5 is amended to update “project” to “film project.”

N.J.A.C. 19:31T-1.4(a)8 is deleted.

Recodified N.J.A.C. 19:31T-1.4(a)9 is amended to reflect the increased diversity bonus as established at P.L. 2023, c. 97, and found at N.J.A.C. 19:31T-1.6(l)2.

Recodified N.J.A.C. 19:31T-1.4(a)10 is amended to clarify that an executed letter of interest, lease, sublease, deed, or purchase contract is required.

N.J.A.C. 19:31T-1.4(a)11 is revised to require that an application for tax credits shall include a completed questionnaire disclosing all relevant legal matters in accordance with the Authority’s debarment and disqualification rules found at N.J.A.C. 19:30-2.

N.J.A.C. 19:31T-1.4(a)12 is added to require that an application for tax credits shall include the submission of a tax clearance certificate.

N.J.A.C. 19:31T-1.4(a)13 is added to require that an application for tax credits shall include a list of all the development subsidies, as defined at N.J.S.A. 52:39-1 et seq., that the developer is requesting or receiving, the name of the granting body, the value of each development subsidy,

and the aggregate value of all development subsidies requested or received.

N.J.A.C. 19:31T-1.4(a)14 is added to set forth the requirements if the applicant is seeking a film tax credit as a studio partner.

N.J.A.C. 19:31T-1.4(a)15 is added to set forth the requirements if the applicant is seeking a film tax credit as a film-lease production company.

N.J.A.C. 19:31T-1.4(a)16 is added to allow the Authority to obtain any other necessary and relevant information, as determined by the Authority, for a specific application.

N.J.A.C. 19:31T-1.4(b) is added to set forth what is required in a completed application to be designated as a studio partner.

N.J.A.C. 19:31T-1.4(c) is added to set forth what is required in a completed application to be designated as a film-lease partner facility.

N.J.A.C. 19:31T-1.4(d) is amended to set forth what is required in a completed application for digital media tax credits.

Recodified N.J.A.C. 19:31T-1.4(d)7 is amended to reflect the increased diversity bonus as established at P.L. 2023, c. 97, and found at N.J.A.C. 19:31T-1.6(l)2.

N.J.A.C. 19:31-21.5 (Recodified at N.J.A.C. 19:31T-1.5) Fees

N.J.A.C. 19:31T-1.5(a) is amended to set forth the revised application fees for the Program.

N.J.A.C. 19:31T-1.5(b) is added to set forth the revised fees required prior to approval for the Program.

N.J.A.C. 19:31T-1.5(c) is amended to set forth the revised fees required prior to receipt of tax credits for the Program.

N.J.A.C. 19:31T-1.5(d) is amended to set forth the revised fees required upon application of a tax credit transfer certificate for the Program.

N.J.A.C. 19:31T-1.5(e) is added to set forth the fees required upon extension of the date the temporary certification of occupancy for the production facility is due.

N.J.A.C. 19:31T-1.5(f) is added to set forth the fees required for each request for any minor administrative changes, additions, or modifications and for each request for any major administrative changes, additions, or modifications.

Recodified N.J.A.C. 19:31T-1.5(g) is amended to set forth that the full amount of direct costs of due diligence including, but not limited to, debarment/disqualification reviews or other analyses by a third party retained by the Authority, if the Authority deems such retention to be necessary, shall be paid by the applicant.

N.J.A.C. 19:31-21.6 (Recodified at N.J.A.C. 19:31T-1.6) Tax Credit

Amounts; Bonus Amount; Carryforward of Tax Credits

N.J.A.C. 19:31T-1.6(a) is amended to remove and replace the term “taxpayer” with the term “approved applicant,” revise a cross-reference to N.J.A.C. 19:31T-1.7(d), and revise language to update the percentage of qualified film production expenses pursuant to P.L. 2019, c. 506, P.L. 2020, c. 156, P.L. 2021, c. 160, P.L. 2021, c. 367, and P.L. 2023, c. 97.

N.J.A.C. 19:31T-1.6(b) is amended to remove and replace the term “taxpayer” with the term “approved applicant” and revise language updating the percentage of qualified film production expenses pursuant to P.L. 2020, c. 156, set forth at new N.J.A.C. 19:31T-1.6(b)1, 2, and 3.

N.J.A.C. 19:31T-1.6(c) is amended to add language clarifying that no tax credit shall be allowed for expenses in an application if it has already been included in the calculation of an award pursuant to N.J.A.C. 19:31T-1.6(a) or (b).

N.J.A.C. 19:31T-1.6(d) and (e) are amended to add the title of the Corporation Business Tax Act and add “pursuant to this Program” to clarify certain circumstances where a business may be an eligible applicant.

N.J.A.C. 19:31T-1.6(f) is amended to add “gross income” to clarify the application of the tax credit to a gross income taxpayer.

N.J.A.C. 19:31T-1.6(g) is amended to delete “section” and replace it with “subchapter,” as well as add “gross income” to clarify the application of the tax credit to a gross income taxpayer.

N.J.A.C. 19:31T-1.6(i) is amended to clarify that the amount of the tax credit applied pursuant to this section against the tax imposed pursuant to N.J.S.A. 54:10A-5 for a privilege period, when taken together with any other payments, credits, deductions, and adjustments allowed by law, shall

not reduce the tax liability of the corporate business taxpayer to an amount less than the statutory minimum provided at N.J.S.A. 54:10A-5.

N.J.A.C. 19:31T-1.6(j) is amended to add “gross income” to clarify that the amount of the tax credit applied pursuant to this section against the tax otherwise due pursuant to N.J.S.A. 54A:1-1 et seq., for a taxable year, when taken together with any other payments, credits, deductions, and adjustments allowed by law, shall not reduce the tax liability of the gross income taxpayer to an amount less than zero.

N.J.A.C. 19:31T-1.6(l) is amended to include the limits found at N.J.A.C. 19:31T-1.6(b), include reference to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., and include, at N.J.A.C. 19:31T-1.6(l)1i, the eligibility for an increase in the tax credit to 25 percent for applicants approved after February 26, 2024, the effective date of the rulemaking.

N.J.A.C. 19:31T-1.6(l)2 and 3 are deleted and new paragraph (l)2 is added to reflect the increase to a 25 percent goal of hiring persons as performers in the film and digital media production who are women or members of a minority group (N.J.A.C. 19:31T-1.6(l)2i), have been residents of New Jersey for at least 12 months preceding the beginning of filming or recording (N.J.A.C. 19:31T-1.6(l)2ii), and are members of a labor union (N.J.A.C. 19:31T-1.6(l)2iii).

N.J.A.C. 19:31-21.7 (Recodified at N.J.A.C. 19:31T-1.7) Evaluation Process for Tax Credits; Initial Approval for Tax Credits, Award of Tax Credits

The heading at N.J.A.C. 19:31T-1.7 is amended to remove “appeals.” The appeals language is now codified at N.J.A.C. 19:31T-1.13.

N.J.A.C. 19:31T-1.7(a) is amended to clarify that 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.

N.J.A.C. 19:31T-1.7(a)1 is amended to clarify that an application for tax credits shall be considered by the Authority for initial approval on a first-in-time basis, subject to the annual caps set forth at N.J.A.C. 19:31T-1.11.

N.J.A.C. 19:31T-1.7(a)2 is amended to set forth that 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 reasonable, based on industry standards.

N.J.A.C. 19:31T-1.7(a)3 is amended to clarify that the Authority shall issue an initial approval letter to an approved applicant that 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 N.J.A.C. 19:31T-1.7(b) is required. N.J.A.C. 19:31T-1.7(a)3 is further amended to set forth that the approval letter shall constitute the non-binding, administrative pre-certification process for potentially eligible projects and failure to submit timely reports may lead to the forfeiture of the tax credit.

N.J.A.C. 19:31T-1.7(b) is amended to replace the term “taxpayer” with the term “approved applicant.”

N.J.A.C. 19:31T-1.7(c) is amended to replace the term “taxpayer” with the term “approved applicant” and clarify that the documentation related to the total film production expenses or the total digital media content production expenses are for the privilege period or taxable year identified in the initial approval.

N.J.A.C. 19:31T-1.7(c)1 is amended to remove language regarding the time period from the initial approval by the Authority and clarify that is from the date of the completed application for the tax credit.

N.J.A.C. 19:31T-1.7(c)2 is added to set forth that if the approved applicant is a studio partner or film-lease production facility, a certification must be provided by the designated studio partner or film-lease partner facility that it has continued to satisfy the requirements of a studio partner or film-lease production facility from the commencement of principal photography.

N.J.A.C. 19:31T-1.7(c)3 is amended to clarify that 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, as well as the Federal identification number are required.

N.J.A.C. 19:31T-1.7(c)4 is newly codified and amended to add “approved” to applicant and remove “and.”

N.J.A.C. 19:31T-1.7(c)4i is newly codified and amended to remove and replace the term “taxpayer” with the term “approved applicant” and to add that the report shall include the date of the last total film production expense, excluding any deferred compensation payments.

N.J.A.C. 19:31T-1.7(c)4i(1) through (5) are added to set forth reviews required by the report set forth at N.J.A.C. 19:31T-1.7(c)4.

N.J.A.C. 19:31T-1.7(c)4ii is added to set forth that in the report, the approved applicant’s qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified.

N.J.A.C. 19:31T-1.7(c)4iii is newly codified to set forth that the amount of the qualified film production expenses or qualified digital media content production expenses in the report shall not be increased, regardless of additional expenses after the date of the report.

N.J.A.C. 19:31T-1.7(c)4iv is added to set forth that if the approved applicant is a studio partner and the qualified film production expenses include deferred compensation payments, the report shall include information necessary and relevant, as determined by the Authority, to demonstrate such deferred compensation payments.

N.J.A.C. 19:31T-1.7(c)4v is added to set forth that if the applicant is a film-lease production company, the report shall also include verification of principal photography shoot days, as necessary, to demonstrate eligibility as a film-lease production company.

N.J.A.C. 19:31T-1.7(c)5 is deleted to remove language regarding the New Jersey Division of Taxation conducting verification of partners or members of pass-through entities and add language regarding what is required in the report for approved applicants that received initial approval for the production of a reality show. New N.J.A.C. 19:31T-1.7(c)5i through v are amended to set forth the additional requirements for approved applicants that received initial approval for the production of a reality show.

Recodified N.J.A.C. 19:31T-1.7(c)7 is amended to set forth that if the “approved” applicant was initially approved for a bonus amount for a diversity plan pursuant to N.J.A.C. 19:31T-1.6(l), evidence of achieving the relevant percentage in the diversity plan or good faith efforts to undertake the diversity plan must be provided. 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 New Jersey Division of Taxation.

N.J.A.C. 19:31T-1.7(c)8 is added to set forth that if the approved applicant is a film-lease production company, the executed lease, sublease, or license to occupy production space in a film-lease partner facility is required in the report.

N.J.A.C. 19:31T-1.7(c)9 is added to set forth that a certification from the approved applicant that the information provided in the report is true pursuant to penalty of perjury is required.

N.J.A.C. 19:31T-1.7(c)10 is added to set forth that the Authority may request any other information necessary for the Authority and the Director to determine compliance with the Program.

N.J.A.C. 19:31T-1.7(d) is amended to replace “certification” with “report” and “taxpayer” with “approved applicant.”

N.J.A.C. 19:31T-1.7(e) is amended to add “approved” and replace “taxpayer” with “approved applicant.”

N.J.A.C. 19:31T-1.7(f) is relocated to N.J.A.C. 19:31T-1.11 and new subsection (f) is added to set forth that if a studio partner received a tax credit for qualified film production expenses that included deferred compensation payments, the studio partner shall submit a supplemental report prepared by a certified public accountant pursuant to agreed-upon procedures prescribed by the Authority and the Director by no later than two years after the date on which the production concludes, as established by the date of the last total film production expense, excluding any deferred compensation payments.

N.J.A.C. 19:31-21.8 (Recodified at N.J.A.C. 19:31T-1.8) Evaluation Process and Designation of Studio Partner and Film-Lease Partner Facility

New N.J.A.C. 19:31T-1.8 is added to set forth the evaluation process and designation of studio partner and film-lease partner facility.

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N.J.A.C. 19:31T-1.8(a) sets forth that an application for designation as a studio partner or a film-lease partner facility shall be submitted to the Authority.

N.J.A.C. 19:31T-1.8(b) sets forth that the completed application for designation as a studio partner or film-lease partner facility shall be considered by the Authority for approval on a first-in-time basis. If interest in a studio partner or film-lease partner facility designation so warrants, the Authority may institute a competitive application process.

N.J.A.C. 19:31T-1.8(c) sets forth that, in order to assist the Authority in designating a studio partner or film-lease partner facility, the Authority may employ an independent consultant, at the cost of the applicant, or may consult with the New Jersey Motion Picture and Television Commission.

N.J.A.C. 19:31T-1.8(d) sets forth that upon review of the application, the Authority's Board shall consider whether to designate the applicant as a studio partner or film-lease partner facility pursuant to N.J.A.C. 19:31T-1.3(d) and (e), respectively. The designation shall expire at the end of the studio partner's commitment period.

N.J.A.C. 19:31T-1.8(d)1 sets forth that, effective upon designation as a studio partner, a film production company shall be eligible for a credit as a studio partner pursuant to this subchapter, provided that the film production company otherwise complies with the eligibility requirements of the Program.

N.J.A.C. 19:31T-1.8(d)2 sets forth that a film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the Authority, provided that final approval of such agreement occurs on or before the date on which production commences at the facility.

N.J.A.C. 19:31T-1.8(e) sets forth that, following approval by the Authority's Board, the Authority shall require the applicant to execute and return an approval letter to the Authority. The Board's designation shall be subject to conditions subsequent set forth in the approval letter. The conditions in the approval letter must be met to retain the designation.

N.J.A.C. 19:31T-1.8(e)1 sets forth that the conditions of approval shall include, but not be limited to: submission of periodic progress reports; executed financing commitments, if applicable; evidence of site plan approval or executed redevelopment agreement with a governmental entity, as applicable; and evidence of site control of the production facility within one year from the Board approval of the designation. The Authority shall grant no more than two six-month extensions of this deadline.

N.J.A.C. 19:31T-1.8(e)2 sets forth that, consistent with N.J.A.C. 19:31T-1.10, the conditions shall also include the requirement that construction at the production facility complies with prevailing wage and affirmative action requirements and that the production facility does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.

N.J.A.C. 19:31T-1.8(e)3 sets forth that a studio partner or film-lease partner facility shall submit the final floor plan, or site plan if there are multiple buildings, indicating the uses and square footage of each area and one or more temporary certificates of occupancy for the minimum required square footage within 36 months from the later of Board approval of the designation or February 26, 2024. The Authority shall grant no more than two six-month extensions of this deadline.

N.J.A.C. 19:31T-1.8(e)4 sets forth that, absent extenuating circumstances or the Authority's determination in its sole discretion, the Authority's designation shall expire if the approved applicant does not provide the required documents within the period of time prescribed in this subsection.

N.J.A.C. 19:31T-1.8(f) sets forth that, when deciding whether to make an equity investment in a film-lease partner facility and the terms of such investment, the Authority shall consider such factors as the financial structure of the production facility, the risk of the investment in the production facility, the developer-contributed capital or equity, the magnitude of State or other governmental support, the reasonable and appropriate return on investment to the developer and the Authority, and the terms offered to other equity owners and investors.

N.J.A.C. 19:31T-1.8(g)1 and 2 set forth that a studio partner shall execute an award agreement that shall include, but not be limited to, the commencement of the commitment and eligibility periods and an agreement that the studio partner shall maintain the lease or

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ownership of the production facility for the duration of the commitment period.

N.J.A.C. 19:31T-1.8(g)2i sets forth that the studio partner shall 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.

N.J.A.C. 19:31T-1.8(g)2ii sets forth that unless otherwise allowed in this subchapter, the studio partner shall 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.

N.J.A.C. 19:31T-1.8(h)1 and 2 set forth that a film-lease partner facility shall execute an award agreement that shall include, but not be limited to: the commencement of the ownership, lease, or operation; and if not owned, the length of the lease or other site control agreement and an agreement that the film-lease partner facility shall maintain the lease or ownership of the production facility in order to maintain the designation.

N.J.A.C. 19:31T-1.8(h)2i sets forth that a film-lease partner facility shall not lease, sublease, or license any part of the production facility for uses other than film production uses, such that the film-lease partner facility occupies less than the minimum amount of square feet.

N.J.A.C. 19:31T-1.8(h)2ii sets forth that, absent the Authority's written consent, the film-lease partner facility shall not sell any part of the production facility, provided that a film-lease partner facility may sell the production facility if it remains the tenant in the production facility occupying at least the minimum amount of square feet.

N.J.A.C. 19:31T-1.8(h)2iii sets forth that unless otherwise allowed in this subchapter, the film-lease partner facility shall not receive any tax credits pursuant to this Program for any activity of its occupant, tenant, or subtenant.

N.J.A.C. 19:31T-1.8(i) sets forth what must be included in the award agreement for a studio partner and a film-lease partner facility.

N.J.A.C. 19:31-21.9 (Recodified at N.J.A.C. 19:31T-1.9) Recapture and Reduction of Tax Credits

New N.J.A.C. 19:31T-1.9 is added. N.J.A.C. 19:31T-1.9(a) sets forth that, if a studio partner fails to occupy the production facility developed, purchased, or leased as a condition of designation as a studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a studio partner, the Authority shall recapture the portion of the tax credit from the studio partner that was only available to the studio partner by virtue of the studio partner's designation as a studio partner, and all the studio partner's films for which an initial approval has been given, but for which the Authority has not given final approval, shall terminate.

N.J.A.C. 19:31T-1.9(b) sets forth that, if a film-lease partner facility fails to operate the production facility developed, purchased, or leased as a condition of designation as a film-lease partner facility or otherwise fails to satisfy the conditions for designation as a film-lease partner facility for the duration of the five-year period, the Authority shall recapture the portion of the tax credit from the film-lease partner facility that was only available to film-lease production companies by virtue of the film-lease partner facility's designation as a film-lease partner facility, and all films from film-lease production companies that relied on the film-lease partner facility designation for which an initial approval has been given, but for which the Authority has not given final approval, shall terminate.

N.J.A.C. 19:31T-1.9(c) sets forth that if an approved applicant has received tax credits on the basis of deferred compensation and the supplemental report from the independent certified public accountant does not evidence actual payment of the deferred compensation, the Authority shall recapture the amount of the tax credit that was based on the projected deferred compensation. If the approved applicant fails to submit the supplemental report by the date required, the Authority shall recapture all of the tax credits based on the projected deferred compensation.

N.J.A.C. 19:31T-1.9(d) and (e) set forth that if, at any time, the Authority determines that a designated studio partner or film-lease partner facility or an approved applicant, respectively, made a material misrepresentation, the approved applicant shall forfeit, and the Authority may recapture any or all of the tax credits awarded.

N.J.A.C. 19:31T-1.9(e) sets forth that any funds recaptured pursuant to this section, including penalties and interest, shall be deposited into the General Fund of the State.

Recodified N.J.A.C. 19:31-21.10 (Recodified at N.J.A.C. 19:31T-1.10)
Application for Tax Credit Transfer Certificate

N.J.A.C. 19:31T-1.10(a), (b), and (c) are amended to replace the term “taxpayer” with the term “approved applicant.”

New N.J.A.C. 19:31T-1.10(e) sets forth that the Authority shall publish on its Internet website information concerning each tax credit transfer certificate approved by the Authority.

Recodified N.J.A.C. 19:31-21.11 (Recodified at N.J.A.C. 19:31T-1.11)
Cap on Total Credits

N.J.A.C. 19:31T-1.11(a) sets forth the total cap on tax credits.

N.J.A.C. 19:31T-1.11(a) sets forth that, pursuant to N.J.S.A. 54:10A-5.39b.e(1) and 12b.f(1), for qualified film production expenses of applicants other than for studio partners and film-lease production companies, the cumulative total shall not exceed \$100,000,000.

N.J.A.C. 19:31T-1.11(a) sets forth that, for studio partners and film-lease production companies, pursuant to N.J.S.A. 54:10A-5.39b.e(1) and 12b.f(1), except as provided for at N.J.A.C. 19:31T-1.11(a)2ii and iii, the cumulative total shall not exceed \$100,000,000 in fiscal year 2021, and in each fiscal year thereafter, prior to fiscal year 2024, and shall not exceed a cumulative total of \$150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040.

N.J.A.C. 19:31T-1.11(a) sets forth that 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 exceeds the amount of tax credits available in that fiscal year, then applicants 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 applications approved by the Authority, provided their applications otherwise satisfy the requirements of the Program, and shall be allowed the amount of tax credits or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates are not in excess of the amount of applicable tax credits available.

N.J.A.C. 19:31T-1.11(b) sets forth that the value of tax credits for digital media content production expenses, including tax credits allowed through the granting of tax credit transfer certificates, approved by the Authority and the Director, shall not exceed a cumulative total of \$30,000,000 in fiscal year 2019, and in each fiscal year thereafter prior to 2040. 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 exceeds the amount of tax credits available in that year, then applicants 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 are not in excess of the amount of credits available.

New N.J.A.C. 19:31T-1.11(c) and (d) set forth the process by which the Authority shall certify available tax credits pursuant to the Program.

N.J.A.C. 19:31T-1.11(e) sets forth that, notwithstanding any provision of this section or other law to the contrary, if a film production company designated as a studio partner ceases to qualify for its designation as a studio partner and becomes designated as a film-lease partner facility, the Authority shall reduce the cumulative total amount of tax credits made available to studio partners in each fiscal year and shall increase the cumulative total amount of tax credits permitted to be approved for film-lease production companies.

Recodified N.J.A.C. 19:31-21.12 (Recodified at N.J.A.C. 19:31T-1.12)
Affirmative Action and Prevailing Wage

N.J.A.C. 19:31T-1.12(a) is amended to clarify when the Authority’s affirmative action and prevailing wage requirements apply to qualified film production expenses and qualified digital media content production expenses.

N.J.A.C. 19:31T-1.12(b) is added to state when the Authority’s affirmative action and prevailing wage requirements apply to studio partners and film-lease partner facilities.

New N.J.A.C. 19:31-21.13 (Recodified at N.J.A.C. 19:31T-1.13)
Appeals

N.J.A.C. 19:31T-1.13 sets forth the appeal process. This provision is relocated from N.J.A.C. 19:31T-1.7. The amendment to this section sets forth that 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.

N.J.A.C. 19:31T-1.13(c) is added and sets forth that appeals that are timely submitted shall be handled by the Authority.

Recodified N.J.A.C. 19:31-21.14 (Recodified at N.J.A.C. 19:31T-1.14)
Severability

The severability provision is recodified without change.

Summary of the Substantial Changes as a Part of this Rulemaking:

N.J.A.C. 19:31T-1.1 Applicability and Scope

The substantial changes made with this rulemaking update the section to include citations to the most recent statutory revisions to the Garden State Film and Digital Media Jobs Act at P.L. 2024, c. 33.

N.J.A.C. 19:31T-1.2 Definitions

The following terms are amended to support the Program: “digital media content,” “eligibility period,” “film” or “film project,” “fiscal year,” “full-time or full-time equivalent employee,” “highly compensated individual,” “incurred in New Jersey,” “loan out company,” “New Jersey film-lease partner facility” or “film-lease partner facility,” “New Jersey film-lease production company” or “film-lease production company,” “New Jersey studio partner” or “studio partner,” “production facility,” “qualified digital media content production expenses,” “qualified film production expenses,” “reality show,” “square feet” or “square footage,” “taxable year,” “Taxation” or “Division,” “tax credit vintage year,” “total digital media content production expenses,” and “total film production expenses.” The terms are amended as follows:

- “Digital media content,” “film” or “film project,” “full-time or full-time equivalent employee,” “highly compensated individual,” “incurred in New Jersey,” “loan out company,” “New Jersey film-lease production company” or “film-lease production company,” and “production facility” are amended to reflect the legislative changes made at Chapter 33;
- “Eligibility period” is amended for the purpose of clarity and to specify when the 10-year period begins;
- “Fiscal year” is amended by removing specific dates;
- “New Jersey film-lease partner facility” or “film-lease partner facility” is amended for the purpose of clarity;
- “New Jersey studio partner” or “studio partner” is amended for the purpose of clarity and to reflect the legislative changes made by Chapter 33;
- “Qualified digital media content production expenses” and “qualified film production expenses” are amended for the purpose of clarity, to include the term “intangible personal property” instead of “intangible personal expenses,” and to reflect the legislative changes made at Chapter 33;
- “Reality show” is amended to include the word “purported”;
- “Square feet” is amended to include the term “square footage”;
- “Taxable year” is amended to clarify language and remove specific dates;
- “Taxation” is amended to include the term “Division”;
- “Tax credit vintage year” is amended to include alternate definitions for applications approved either prior to January 1, 2026 or after January 1, 2026;
- “Total digital media content production expenses” is amended to remove the exclusion for intangible personal expenses incurred after February 26, 2024; and
- “Total film production expenses” is amended to remove the exclusion for intangible personal expenses incurred after February 26, 2024, and to include an alternate definition for applications completed after January 1, 2026.

The following new terms are added: “digital media content,” “film completion,” “independent post-production company,” “qualified wage and salary payments,” and “television series.”

N.J.A.C. 19:31T-1.3 Eligibility Criteria

N.J.A.C. 19:31T-1.3(a)1i and ii are amended to include the requirement that such expenses be incurred in New Jersey.

New N.J.A.C. 19:31T-1.3(a)1iii provides eligibility requirements for reality shows.

N.J.A.C. 19:31T-1.3(a)4 is amended to update a cross-reference.

N.J.A.C. 19:31T-1.3(b)1i is amended to limit qualifying digital media content production expenses to those incurred in New Jersey and exclude qualified wage and salary payments made to full-time employees working on digital media for applications submitted after July 10, 2024.

New N.J.A.C. 19:31T-1.3(b)1ii permits additional qualifying digital media content production expenses of at least \$500,000 incurred in New Jersey for post-production services, including visual effects services that are performed at a New Jersey film-lease production facility or by a studio partner.

New N.J.A.C. 19:31T-1.3(b)1iii permits additional qualifying digital media content production expenses of at least \$500,000 incurred in New Jersey for post-production services, including visual effects services that are performed by a qualified independent post-production company.

N.J.A.C. 19:31T-1.3(c) is amended to include certain payments made by an approved applicant to a loan out company as qualified film production expenses and qualified digital media content production expenses; provided that the payments are made for services performed in New Jersey by loan out company employees whose wages are subject to New Jersey income tax withholding, unless those employees are not subject to withholding because of a reciprocity agreement with another state.

N.J.A.C. 19:31T-1.3(d) and (e) and (e)1 are amended to update cross-references and for grammatical clarifications.

N.J.A.C. 19:31T-1.4 Application Submission Requirements

N.J.A.C. 19:31T-1.4(a)2, 3, and 4 are amended to update cross-references.

N.J.A.C. 19:31T-1.4(a)8 is amended for grammatical clarification.

N.J.A.C. 19:31T-1.4(a)10 is amended by identifying the existing text as subparagraph (a)10i, which applies to reality show eligibility requirements for applications submitted before July 10, 2024, and adding a new subparagraph (a)10ii, which establishes reality show eligibility requirements for applications submitted after July 10, 2024.

N.J.A.C. 19:31T-1.4(a)11 and 12 are proposed for deletion.

Recodified N.J.A.C. 19:31T-1.4(a)11 is amended by replacing “developer” with “applicant.”

Recodified N.J.A.C. 19:31T-1.4(a)12i is amended to add “film production company designated as a” before “studio partner” for the purpose of clarity.

Recodified N.J.A.C. 19:31T-1.4(a)12ii(2)(A), (B), and (C) are deleted and replaced with new sub-sub-subparagraphs (a)12ii(2)(A) and (B), which set forth that if the applicant is seeking a film tax credit as a studio partner unrelated to the studio partner, but principally engaged the production with a film that is the subject of the application because of a contract with the studio partner, the applicant must provide written consent from the studio partner for the unrelated entity to apply for tax credits and a copy of a contract with the studio partner evidencing that such studio is in control of the film and its distribution rights, which was signed before expenses were incurred, but after the studio partner’s designation.

Recodified N.J.A.C. 19:31T-1.4(a)13ii is amended to add a requirement that an applicant seeking a film tax credit pursuant to subparagraph (a)1i of the definition of film-lease production company must also submit written proof of occupancy of a film-lease partner facility during the required principal photography shoot days.

Recodified N.J.A.C. 19:31T-1.4(a)13iii is deleted and replaced to require that an applicant seeking a film tax credit pursuant to subparagraph (a)1ii of the definition of film-lease production company must also submit a budget that meets the requirements of that subparagraph, as well as written proof of occupancy in a film-lease partner facility during the time

of the required qualified film production expenses incurred at, or for the use of, the film-lease partner facility.

New N.J.A.C. 19:31T-1.4(a)13iv provides that an applicant seeking a film tax credit pursuant to subparagraph (a)2 of the definition of film-lease production company must also submit the lease or sublease of the film-lease partner facility and the contract with the facility required at subparagraph (a)2 that is dated prior to incurring qualified film production expenses.

Recodified N.J.A.C. 19:31T-1.4(a)13v(3)(C) is amended to correct a cross-reference and for grammatical clarifications.

N.J.A.C. 19:31T-1.4(b)1 is amended for grammatical clarification.

N.J.A.C. 19:31T-1.4(b)5 and 6 and (c)5 and 6 are deleted.

N.J.A.C. 19:31T-1.4(d)1 is amended for clarity and to update the cross-references.

New N.J.A.C. 19:31T-1.4(d)2 sets forth that if an applicant for digital media tax credits is applying to recover expenses for services provided by a qualified independent post-production company, the applicant must also provide the ownership structure of that company and any other evidence that the company qualifies as an independent post-production company while the applicant’s expenses were incurred.

Recodified N.J.A.C. 19:31T-1.4(d)3 is amended to update cross-references.

Recodified N.J.A.C. 19:31T-1.4(d)8 is amended to delete the reference to the increased bonus amount of tax credits pursuant to N.J.A.C. 19:31T-1.6(l)2 and its associated requirements.

New N.J.A.C. 19:31T-1.4(d)9 requires an applicant for digital media tax credits to provide a list of development subsidies, as defined at N.J.S.A. 52:39-1 et seq., that the developer is requesting or receiving, the name of the granting body, the value of each development subsidy, and the total value of all development subsidies requested or received.

New N.J.A.C. 19:31T-1.4(e) requires that all applicants seeking digital media tax credits must submit a legal questionnaire associated with the Authority’s debarment and disqualification rules and a tax clearance certificate.

N.J.A.C. 19:31T-1.6 Tax Credit Amounts; Bonus Amount; Carryforward of Tax Credits

N.J.A.C. 19:31T-1.6(a) and (b) are amended to limit a tax credit vintage year to a privilege period or taxable year between July 1, 2018 and July 1, 2039. N.J.A.C. 19:31T-1.6(a)1, 2, 3, and 4 are clarified to specify that “applications” means “completed applications” and to provide that the expenses described at N.J.A.C. 19:31T-1.6(a)2 and (a)4ii include qualified wage and salary payments. N.J.A.C. 19:31T-1.6(a)5 is deleted.

New N.J.A.C. 19:31T-1.6(b)1 establishes digital media tax credits applicable to completed applications submitted after July 10, 2024. New N.J.A.C. 19:31T-1.6(b)1i allows an applicant to obtain a digital media tax credit equal to 40 percent of its qualified digital media content production expenses incurred in New Jersey for post-production services, including visual effects services, that were performed at a film-lease partner facility or were incurred by a studio partner during a privilege period or taxable year. New N.J.A.C. 19:31T-1.6(b)1ii allows an applicant to obtain a digital media tax credit equal to 35 percent of its qualified digital media content production expenses incurred in New Jersey for post-production services, including visual effects services, that were performed by a qualified independent post-production company.

Recodified N.J.A.C. 19:31T-1.6(b)2 and 3 are amended for clarity to specify that “application” means “completed application.” N.J.A.C. 19:31T-1.6(b)2ii is amended to update a cross-reference and to provide that the expenses described at N.J.A.C. 19:31T-1.6(b)2i include qualified wage and salary payments. Further, recodified N.J.A.C. 19:31T-1.6(b)3 is amended to specify that this paragraph applies only to applications submitted prior to July 10, 2024. N.J.A.C. 19:31T-1.6(b)3ii is amended to update a cross-reference and to provide that the expenses described at N.J.A.C. 19:31T-1.6(b)3i include qualified wage and salary payments. N.J.A.C. 19:31T-1.6(b)3 is deleted.

N.J.A.C. 19:31T-1.6(l)1 is amended to specify that “applicant” means “approved applicant” and to provide that an increase in tax credits is allowed that is equal to two percent of the qualified film production expenses or the qualified digital media content expenses. This paragraph is further amended to allow an increase in tax credits equal to four percent

of the qualified digital media content production expenses for applications submitted after July 10, 2024, and to state that the diversity plan information submitted must be in relation to the total film production expenses or total digital media content production expenses. N.J.A.C. 19:31T-1.6(l)1iv is amended to specify that “applicant” means “approved applicant.” N.J.A.C. 19:31T-1.6(l)2 is amended to specify that this paragraph applies to applications submitted on or after January 12, 2022, and to provide that background actors and extras with no spoken lines cannot be included in the 25 percent diversity hiring goal.

N.J.A.C. 19:31T-1.7 Evaluation Process: Approval of Award of Tax Credits

N.J.A.C. 19:31T-1.7(a) is amended for clarity and to subcodify part of the subsection. New N.J.A.C. 19:31T-1.7(a)1 is amended to state that completed applications will be received by the Authority and then be forwarded to the Commission for its review for content eligibility.

Recodified N.J.A.C. 19:31T-1.7(a)3 is amended by deleting the reference to assigning a tax credit vintage year and clarifying that “digital media expenses” means “digital media content production expenses.”

N.J.A.C. 19:31T-1.7(b) is amended for clarity and to subcodify part of the subsection. New N.J.A.C. 19:31T-1.7(b)1 is amended to reflect that N.J.A.C. 19:31T-1.7(b) applies to approved applications with a tax vintage year based upon subparagraph (a) of the definition of “tax credit vintage year.”

New N.J.A.C. 19:31T-1.7(b)2 applies to approved applications with a tax vintage year based upon subparagraph (b) of the definition of “tax credit vintage year,” and adds that final documentation must be submitted no later than three years after the Authority’s initial approval, but that the Authority may grant up to two six-month extensions.

N.J.A.C. 19:31T-1.7(c) is amended to delete “total film production expenses or” and to state that the approved applicant can also submit the required documentation at film completion.

N.J.A.C. 19:31T-1.7(c)1 is amended to subcodify the paragraph. New N.J.A.C. 19:31T-1.7(c)1ii requires the approved applicant to provide evidence that marketing materials are included in the film that comply with N.J.A.C. 19:31T-1.3(a)3. New N.J.A.C. 19:31T-1.7(c)1iii requires the approved applicant to provide evidence of film completion.

N.J.A.C. 19:31T-1.7(c)4ii is amended to change “section” to “Program,” to indicate the tax credit is pursuant to the entire Program, not just N.J.A.C. 19:31T-1.7.

N.J.A.C. 19:31T-1.7(c)4v is amended for grammar and clarity.

N.J.A.C. 19:31T-1.7(c)4 and 5 are deleted.

Recodified N.J.A.C. 19:31T-1.7(c)5 is amended for grammar and clarity.

New N.J.A.C. 19:31T-1.7(c)7 provides that if an approved applicant is seeking tax credits on the basis of services performed by a qualified independent post-production company, then it must submit a certification that the independent post-production company met the definition of a qualified independent post-production company during the time in which the qualified digital media content production expenses were incurred.

New N.J.A.C. 19:31T-1.7(d) provides that approved applicants who receive initial approval for a reality show do not have to provide evidence that all episodes have been filmed or that the reality show has premiered.

Recodified N.J.A.C. 19:31T-1.7(f) is amended for grammar and clarity.

Recodified N.J.A.C. 19:31T-1.7(g) is amended to state that the date the production concludes is the date of film completion, instead of the date of the last total film production expense.

N.J.A.C. 19:31T-1.8 Evaluation Process and Designation of Studio Partner and Film-Lease Partner Facility

N.J.A.C. 19:31T-1.8(d) is amended to reflect that “application” means “completed application.”

New N.J.A.C. 19:31T-1.8(d)3 provides that for completed applications approved after July 10, 2024, a film-lease production company applying pursuant to paragraph (a)2 in the definition of film-lease production company can apply for film tax credits upon the designation of the corresponding film-lease partner facility.

N.J.A.C. 19:31T-1.8(e)1 is amended to require the submission of planning and zoning approvals and permits and any other required permits as conditions of approval in the approval letter and to replace the

requirement that the Authority “shall grant no more than two” deadline extensions with language stating that the Authority “may grant” six-month deadline extensions.

N.J.A.C. 19:31T-1.8(e)2 is amended to update a cross-reference.

N.J.A.C. 19:31T-1.8(e)3 is amended to update the requirement that the Authority “shall grant no more than two” deadline extensions with language stating that the Authority “may grant” six-month deadline extensions.

N.J.A.C. 19:31T-1.8(g)1 is amended to require an award agreement to include the end of the commitment and eligibility periods.

N.J.A.C. 19:31T-1.8(g)2i is amended to provide an exception to the rule restricting a studio partner from leasing, subleasing, or licensing its production facility that results in the studio partner occupying less than the minimum required square feet for more than 12 months or for the period longer than the remainder of the commitment period.

N.J.A.C. 19:31T-1.9 Recapture and Reduction of Tax Credits

New N.J.A.C. 19:31T-1.9(a) provides consequences if a studio partner is designated on the basis of a lease of a production facility that is a portion of a film-lease production facility before the film-lease partner facility receives a temporary certificate of occupancy and fails to occupy such facility. New paragraph (a)1 requires the Authority to revoke the designation of the studio partner under the circumstances described at N.J.A.C. 19:31T-1.9(a). New paragraph (a)2 states that all films approved for film tax credits on the basis of the designated studio partner that have received initial approval, but not final approval, shall terminate and be given film project status. New paragraph (a)3 allows the Authority to recapture the portion of the tax credit available to the studio partner by virtue of its designation as a studio partner, except that no tax credits shall be recaptured within a year after the studio partner designation.

Recodified N.J.A.C. 19:31T-1.9(b) is amended to state that it applies to all studio partners other than those described at N.J.A.C. 19:31T-1.9(a), and is amended for grammar and clarity.

Recodified N.J.A.C. 19:31T-1.9(c) is amended to state that the Authority “may” instead of “shall” revoke the designation of the film-lease partner facility. This subsection is further amended for grammar and clarity and to state that all films that relied on the film-lease party facility designation that have been given initial, but not final, approval shall not terminate but instead be reduced to eliminate the portion of the tax credits only available by virtue of the film-lease partner facility’s designation as a film-lease partner facility.

New N.J.A.C. 19:31T-1.9(d) establishes consequences if a film-lease production company receiving a film tax credit pursuant to paragraph (a)2 in the definition of film-lease production company fails to meet the qualifications of a film-lease production company or comply with the application provisions in the definition of film-lease production company. New paragraph (d)1 provides that all of the film-lease production company’s films that have initial, but not final, approval shall be terminated as a film-lease production company film project and instead be deemed a film project. New paragraph (d)2 allows the Authority to recapture the portion of the tax credit available to the film-lease production company by virtue of the designation of a film-lease partner facility, except that no tax credits shall be recaptured within a year of the date of the film-lease production company’s lease with the film-lease partner facility.

Recodified N.J.A.C. 19:31T-1.9(e) and (f) are amended for grammar and clarity.

New N.J.A.C. 19:31T-1.9(h) states that if the Authority later obtains information indicating that a reduction, forfeiture, or recapture of tax credits should have applied, it will recapture the tax credits for the relevant time period.

N.J.A.C. 19:31T-1.9(i) is added and states that if a tax credit subject to recapture has been sold or assigned pursuant to N.J.A.C. 19:31T-1.10, the Authority will pursue recapture from the corresponding studio partner, film-lease partner facility, or film production company, not from the purchaser or assignee.

N.J.A.C. 19:31T-1.10 Application for Tax Credit Transfer Certificate

N.J.A.C. 19:31T-1.10(e) is amended for grammar and clarity.

N.J.A.C. 19:31T-1.11 Cap on Total Credits

N.J.A.C. 19:31T-1.11(a) is amended to specify what taxes Authority-issued film tax credits apply against and to provide when such tax credits are allowed.

N.J.A.C. 19:31T-1.11(a)1 is amended for grammar and clarity.

New N.J.A.C. 19:31T-1.11(a)2 makes an additional \$300,000,000 of uncommitted Aspire and Emerge program tax credits available as Program tax credits in 2025.

Recodified N.J.A.C. 19:31T-1.11(a)3 and 4 are amended to update cross-references and for grammar and clarity.

N.J.A.C. 19:31T-1.11(b) is amended to specify what taxes Authority-issued digital media tax credits apply against and to provide when such tax credits are allowed. This subsection is also subcodified to include a paragraph (b)1, which is amended to include applicable statutory cross-references.

New N.J.A.C. 19:31T-1.11(b)2 states that beginning July 1, 2024, in the Authority's discretion, up to an additional \$100,000,000 may be made available for the award of tax credits, including those allowed through the granting of tax credit transfer certificates, from funds available to approved applicants for film tax credits other than studio partners and film-lease production companies pursuant to N.J.S.A. 34:1B-362(d)(3) and N.J.A.C. 19:31T-1.11(a)2.

Newly codified N.J.A.C. 19:31T-1.11(b)3 is amended to allow applications for tax credits and tax credit transfer certificates to be approved by the Authority for use in the next fiscal year in the event that the total tax credits and tax credit transfers approved during a single fiscal year exceed the amount of tax credits available that year, as long as the applications satisfy the requirements of this section.

N.J.A.C. 19:31T-1.11(c) and (d) are amended to update cross-references.

N.J.A.C. 19:31T-1.12 Affirmative action; and prevailing wage

N.J.A.C. 19:31T-1.12(b) is amended to specify that the Authority's prevailing wage and affirmative action requirements apply to construction contracts for work performed at the production facility.

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 readoption of the specially adopted amendments and new rules with substantial changes will have a positive social impact by attracting motion picture, television, and digital media production in New Jersey, which create both permanent production jobs, as well as construction jobs, promote New Jersey's diverse locations and landscapes, incentivize diversity in recruitment and hiring, revitalize local economic activity, 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 each State fiscal year, beginning with State Fiscal Year 2019 and ending with State Fiscal Year 2039, for a total available pool of \$2 billion. The total amount of film credits available for studio partners is \$100 million each State fiscal year, beginning in State Fiscal Year 2019 and ending in State Fiscal Year 2023, and beginning in State Fiscal Year 2024 and ending in State Fiscal Year 2039 is \$150 million each State fiscal year, for a total available pool of \$2.65 billion. The total amount of film credits available for film-lease production companies is \$100 million per State fiscal year, beginning in State Fiscal Year 2019 and ending in State Fiscal Year 2023, the total amount of tax credits available to film-lease production companies is \$150 million beginning in State Fiscal Year 2024 and ending in State Fiscal Year 2039, for a total available pool of \$2.65 billion.

The proposed readoption of the specially adopted amendments and new rules with substantial changes will impose appropriate costs on

applicants. 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.

Federal Standards Statement

A Federal standards analysis is not required because the proposed readoption of the specially adopted amendments and new rules with substantial changes 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 readoption of the specially adopted amendments and new rules with substantial changes 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. The specially adopted and concurrently 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 readoption of the specially adopted amendments and new rules with substantial changes will not have any impact on the agriculture industry of the State of New Jersey.

Regulatory Flexibility Analysis

The proposed readoption of the specially adopted amendments and new rules with substantial changes 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.

Housing Affordability Impact Analysis

The proposed readoption of the specially adopted amendments and new rules with substantial changes 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 specially adopted amendments and new rules with substantial changes incentivize production companies to file and create digital media content in New Jersey and do not affect housing costs.

Smart Growth Development Impact Analysis

The proposed readoption of the specially adopted amendments and new rules with substantial changes will have an insignificant impact on smart growth and there is an extreme unlikelihood that they would evoke a change in housing production in Planning Areas 1 or 2, or in designated centers, pursuant to the State Development and Redevelopment Plan because the specially adopted amendments and new rules with substantial changes incentivize production companies to file and create digital media content in New Jersey and do not affect housing development.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed readoption of the specially adopted amendments and new rules with substantial changes will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State. Accordingly, no further analysis is required.

Full text of the proposed readoption of the specially adopted amendments and new rules with substantial changes follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]; the newly proposed substantial changes additions are indicated in boldface and italics **thus**; deletions are indicated in cursive italicized brackets /thus/):

SUBCHAPTER 21. GARDEN STATE FILM AND DIGITAL MEDIA JOBS PROGRAM

19:31T-1.1 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 at P.L. 2019, c. 506; P.L. 2020, c. 156; P.L. 2021, c. 160; P.L. 2021, c. 367; /and/ P.L. 2023, c. 97; and P.L. 2024, c. 33.**

19:31T-1.2 Definitions

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

“Applicant” means:

1. A film production company applying for designation as a studio partner;
2. An entity applying for designation as a film-lease partner facility;
3. A person or entity applying for a tax credit for qualified film production expenses. Such an entity includes, but is not limited to, a designated studio partner or an entity applying for a tax credit as a film-lease production company; or
4. A person or entity applying for a tax credit for qualified digital media content production expenses.

“Approved applicant” means an applicant for a tax credit for qualified film production expenses or qualified digital media content production expenses that has received initial approval from the Authority.

“Commission” means the New Jersey Motion Picture and Television [Development] Commission.

“Commitment period” means, for studio partners, the period beginning with the commencement of the eligibility period and expiring 10 years following:

1. In the case of a studio partner developing or purchasing a production facility, the issuance of a temporary certificate(s) of occupancy for the production facility developed or purchased as a condition of designation as a studio partner; or
2. In the case of a studio partner leasing a production facility, commencement of the lease term for the production facility leased as a condition of designation as a studio partner.

“Deferred compensation” means additional payments made to highly compensated individuals, such as writers, directors, producers, and performers, other than background actors with no scripted lines, that increase the total remuneration received for services performed on a production. Deferred compensation payments may include, but are not limited to, payments and advance payments for profit participations, residuals, launch bonuses, buy-out fees, or any other compensation due a highly compensated individual as a result of their services performed on, or the financial exploitation of a film or commercial audiovisual product.

“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; the following digitally formatted and distributed content, which content includes data or information created in analog form, but reformatted in digital form: animation; video games; visual effects; interactive media, including virtual, augmented, or mixed reality; content containing text, graphics, or photographs; sound; and video.* “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] **approved applicant** for distribution or incorporation into the [taxpayer’s] **approved applicant’s** digital media content.

“Eligibility period” means, with respect to studio partners, the period in which a studio partner may claim a tax credit for qualified film production expenses, including expenses that would not constitute qualified film production expenses but for the approved applicant’s designation as a studio partner{, beginning the earlier of:}.

(a) The eligibility period begins the earlier of:

1. The commencement of the principal photography for the studio partner’s initial film in New Jersey; or

2. In the case of a studio partner developing or purchasing a production facility, at the issuance of a temporary certificate(s) of occupancy for the production facility developed or purchased as a condition of designation as a studio partner, and in the case of a studio partner leasing a production facility, at the commencement of the lease term for the production facility leased as a condition of designation as a studio partner.

(b) Regardless of the event that commences the eligibility period, the eligibility period ends 10 years after the issuance of the temporary certificate of occupancy or the commencement of the lease term described at paragraph (a)2 above.

“Film” or “film project” 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]:

1. A documentary feature film, documentary television series, or documentary television show/s/;

2. A game show[, award show,];

3. A talk show;

4. A competition or variety show filmed before a live audience; or

5. An 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 events, a production that solicits funds, a production containing obscene material as defined [under] at 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] **applicants** applying for a tax credit against the tax imposed pursuant to section 5 [of] at 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{ has obtained a minimum six episode order from, and is commissioned and scheduled to premiere on, a major linear network or streaming service. {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 completion” means 30 days after the process of post-production of a film has been finished and a final composite answer print, delivery air master, HD air master, interoperable master format

(IMF), digital cinema files, or industry equivalent of the film is completed.

“Film production use” means a film studio, professional stage, sound stage, television studio, recording studio, screening room, or other production support space or infrastructure used for producing films or other commercial audiovisual products, including, but not limited to, production offices, mill space, or backlots, provided that the predominant use shall not be administrative or back-office use and that backlots shall not exceed 20 percent of the required minimum size of the production facility.

“Fiscal year” means the State’s fiscal year{, which begins July 1 and ends June 30}.

“Full-time or full-time equivalent employee” means an individual employed by the [taxpayer] **approved applicant** for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., *or whose wages are not subject to tax pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state, regardless of whether the individual is a resident or nonresident gross income taxpayer, or who is a partner[,* the taxpayer] **of an approved applicant**, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. “Full-time or full-time equivalent employee” shall not include an individual who works as an independent contractor or on a consulting basis for the [taxpayer] **approved applicant**.

“Highly compensated individual” means, *for studio partners and film-lease production companies*, an individual who directly or indirectly receives compensation in excess of \$500,000 for the performance of services used directly in a production *and for approved applicants other than studio partners and film-lease production companies who applied on or after July 10, 2024, an individual who directly or indirectly receives compensation in excess of \$750,000 for the performance of services used directly in a production.* An individual receives compensation indirectly when the [taxpayer] **approved applicant** pays a loan out company that, in turn, pays the individual for the performance of services.

“Homeowner” means an individual who owns and occupies a personal residence, whether as their primary residence or otherwise.

“Incurred in New Jersey” means, for any application submitted after July 3, 2018, the effective date of P.L. 2018, c. 56, 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 in 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, at the Authority’s discretion,} and the film production company provides to the Authority the vendor’s information in a form and manner prescribed by the Authority. Purchased tangible property 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 in New Jersey; provided, however, that if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey, *to the extent that the property is located in New Jersey during its use or consumption,* if the acquisition and delivery of purchased tangible property is located in either New Jersey or another jurisdiction where the production takes place. Payment made to a homeowner for the use of a personal residence located in the State for filming shall be deemed an expense incurred in New Jersey, notwithstanding the fact

that such homeowner is not a vendor authorized to do business in New Jersey, provided that the approved applicant has made the withholding required by N.J.S.A. 54:10A-5.39b.g and 54A:4-12b.h and N.J.A.C. 19:31T-1.3(c).

“Independent contractor” means an individual treated as an independent contractor for Federal and State tax purposes who is contracted with by the [taxpayer] **approved applicant** for the performance of services used directly in a production.

“Independent post-production company” or “qualified independent post-production company” means a corporation, partnership, limited liability company, or other entity principally engaged in the provision of post-production services, including visual effects services, for a film or films described in this chapter, including a film or films that do not satisfy the requirements at N.J.S.A. 54:10A-5.39b(a)(1)(a) and 54A:4-12b(a)(1)(a) and N.J.A.C. 19:31T-1.3(a), which entity is not a publicly traded entity or for which entity that no more than five percent of the beneficial ownership is owned directly or indirectly by a publicly traded entity.

“Loan out company” means *for applications submitted prior to July 10, 2024, a personal service corporation or other entity with which an approved applicant contracts for the provision of specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production; and, for applications submitted on or after July 10, 2024, a personal service corporation or other entity, authorized to do business in New Jersey, that is contracted with by the [taxpayer] **approved applicant** 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] **approved applicant** to provide goods or ancillary contractor services, such as catering, construction, trailers, equipment, or transportation.

“New Jersey film-lease partner facility” or “film-lease partner facility” means one of the following for which the owner, developer, or tenant has made the commitment to build, lease, or operate for a period of at least five successive years beginning with the later of the date of Authority approval or the issuance of the temporary certificate(s) of occupancy:

1. A production facility;
2. A production facility built, leased, or operated by a production company designated as a studio partner, which the studio partner no longer occupies; or
3. A portion of a production facility owned by a studio partner that is in excess of the space being utilized by the studio partner; provided that the space utilized by the studio partner *and by the film-lease partner facility* both exceed/s/ the minimum size for a studio partner and film-lease partner facility, respectively.

“New Jersey film-lease production company” or “film-lease production company” means /an/:

(a) An applicant, including any applicant that is a member of a combined group pursuant to N.J.S.A. 54:10A-4.11 or any other entity in which the film-lease production company has a material ownership interest of at least 30 percent and material operational role in the production, including, but not limited to, as a producer, that otherwise complies with the eligibility requirements of the program and has made a commitment to lease or otherwise occupy production space in a film-lease partner facility /and who will shoot/.

i. In addition to the foregoing, if a film-lease partner facility has received a temporary or final certificate of occupancy, a film production company shall satisfy one of the following two criteria:

ii. The film production company shoots at least 50 percent of the total principal photography shoot days of the film project within New Jersey at the film-lease partner facility{,}; or

iii. The qualified film production expenses of the project for all services performed and goods used or consumed at the film-lease partner facility and payments made for the use of the film-lease partner facility equal or exceed 33 percent of the total qualified film production expenses of the project.

2. In addition to the forgoing, if a film-lease partner facility has not yet received a temporary or final certificate of occupancy, a film production company shall have:

i. Entered into a lease or sublease with the owner or developer of a film-lease partner facility, which:

(1) Is for not less than three years of occupancy of the film-lease partner facility; and

(2) Includes at least 36,000 square feet of soundstage space; and

ii. Executed a contract with the owner or developer of the film-lease partner facility for such owner or developer to provide production services for films produced by the film production company in New Jersey prior to the film-lease partner facility's receipt of a temporary or final certificate of occupancy.

(b) {A “New Jersey film-lease production company” may include an} An unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated film-lease production company contracts to perform film production services on its behalf, such that the designated film-lease production company controls such film or product during preproduction, production, and postproduction, and all results and proceeds of such services constitute, from the moment of creation, “works made for hire” for the film-lease production company pursuant to the provisions of the Federal Copyright Act of 1976, 17 U.S.C. §§ 101 et seq.

“New Jersey studio partner” or “studio partner” means {a}:

(a) When applying for a designation:

1. 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, or has executed a purchase contract with a governmental authority for the purpose of developing a production facility, which purchase contract must be executed within 48 months from the date of designation as a New Jersey studio partner; provided, however, the Authority Board, in its discretion, may extend the time to execute a purchase contract for an additional 12 months{,}; or

2. A {“studio partner” shall also include a} film production company that executes at least a 10-year lease for a production facility that is a portion of a film-lease partner facility.

(b) When applying for a film tax credit:

1. The film production company designated as a studio partner;

2. {A “New Jersey studio partner” may include any} Any other member of {an applicant’s} the combined group, pursuant to N.J.S.A. 54:10A-4.11{,}, of the film production company designated as a studio partner; or

3. {For the purpose of applying for film tax credits pursuant to N.J.A.C. 19:31T-1.3, a “New Jersey studio partner” shall also mean an unrelated} An entity unrelated to the film production company designated as a studio partner, which entity is principally engaged in the production of a film or other commercial audiovisual product with whom {a} the film production company designated as a studio partner contracts to perform film production services on its behalf or for its benefit, such that the film production company designated as a studio partner {controls}:

i. Controls such film or product during pre-production, production, and post-production{,}, and all results and proceeds of such services constitute, from the moment of creation, “works made for hire” for the studio partner pursuant to the provisions of the Federal Copyright Act of 1976, 17 U.S.C. §§ 101 et seq.}; or

ii. Controls global distribution rights for the resulting film or other commercial audiovisual product, provided that the studio partner contracted with the unrelated entity prior to qualified film production expenses being incurred.

“Personal residence” means a residential unit, the land on which the residential unit is located, and any other structures on such land. A personal residence includes, but is not limited to, a condominium, a unit in a horizontal property regime, or a unit in a cooperative or mutual housing corporation of a residential shareholder. A personal residence excludes a multi-family residential structure of more than

four units and a residential unit that another person occupies as that person’s primary residence.

“Principal photography” means the filming of major and significant portions of a qualified film that involves the [lead actors or actresses] director of the film on set. For animated films, “principal photography” means the point at which the models created during the pre-production phase are complete and the staff begins to choreograph, animate, and render the animations.

“Production facility” means a building or buildings in New Jersey used for film production uses {of no less than 20,000 square feet for a production company of a reality show and} with no less than 250,000 square feet for a film-lease partner facility or a studio partner.

“Qualified digital media content production expenses” means expenses incurred in New Jersey after July 1, 2018, *to the extent that any such expense is incurred* for the production of digital media content. “Qualified digital media content production expenses” shall include, but [shall] not be limited to: *the wages and salaries of individuals employed in the production of digital media content that are not subject to tax pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment; and the costs for post-production, including, but not limited to: editing, sound design, visual effects, animation, music composition, color grading, and mastering.* Payments made to a loan out company or to an independent contractor shall not be [a] *deemed* “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] *approved applicant* has made the withholding required [by] *pursuant to N.J.S.A. 54:10A-5.39b,g and 54A:4-12b,h and N.J.A.C. 19:31T-1.3(c).* “Qualified” *For applications submitted prior to July 10, 2024, “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. *For applications submitted after July 10, 2024, “qualified digital media content production expenses” shall not include expenses incurred in marketing, promotion, or advertising digital media; costs incurred for the design, maintenance, and hosting of websites; 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] *approved applicant* for distribution or incorporation into the [taxpayer’s] *approved applicant*’s digital media content *or any costs included in another program application submitted to the Authority, or other costs for intangible personal {expenses} property, 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 *and for completed applications submitted on or after January 1, 2026, until film completion, except that deferred compensation may be incurred after film completion.* “Qualified film production expenses” shall include, but [shall] not be limited to: *the wages and salaries of individuals employed in the production of a film on which the tax imposed [by] pursuant to N.J.S.A. 54A:1-1 et seq., has been paid or is due, and any wages and salaries of individuals employed in the production of a film that are not subject to tax pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; 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 out] performed in this State or for the rendition of personal services performed in this State and the [taxpayer] approved applicant has made the withholding required [by] pursuant to N.J.S.A. 54:10A-5.39b.g and 54A:4-12b.h and N.J.A.C. 19:31T-1.3(c). As of July 6, 2023, the effective date of P.L. 2023, c. 97, payment made to a homeowner, who is otherwise not a vendor authorized to do business in New Jersey, for the use of a personal residence for filming shall not be deemed a “qualified film production expense” unless the approved applicant has made the withholding required pursuant to N.J.S.A. 54:10A-5.39b.g and 54A:4-12b.h and N.J.A.C. 19:31T-1.3(c). For the purposes of this definition, wages and salaries of individuals employed in the production of a film shall include deferred compensation, including advances on deferred compensation, incurred by studio partners, provided the studio partner files a supplemental report as set forth at N.J.A.C. 19:31T-1.7(f). “Qualified film production expenses” shall not include: costs for intangible personal {expenses} property incurred after February 26, 2024; expenses incurred in marketing or advertising a film; {and} expenses for a story, script, or scenario to be used for a film; reality show, game show, and competition show prizes or awards; any costs included in an another program application submitted to the Authority; for taxpayers other than studio partners and film-lease production companies, payment in excess of {\$500,000/ \$750,000} to a highly compensated individual for {costs for a story, script, or scenario used in the production of a film and/ wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines[.]{;}} and for studio partners and film-lease production companies, payment in excess of \$500,000 to a highly compensated individual 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, based on the qualified film production expenses in the State without including the excess amounts paid to highly compensated individuals:

1. For a studio partner that incurs less than {\$50,000,000/ \$25,000,000} in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed \$18,000,000, 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 studio partner that incurs {\$50,000,000/ \$25,000,000} or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed \$72,000,000, 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 film-lease production company that incurs less than \$50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed \$15,000,000, 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 film-lease production company that incurs \$50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed \$60,000,000, 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.

“Qualified wage and salary payments” means the wage and salary payments incurred by the approved applicant in New Jersey.

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

“Selling business” means [a taxpayer] an approved applicant that has unused tax credits, which it wishes to sell.

“Shoot day” means a minimum of eight hours from first unit crew call to wrap.

“Square feet” or “square footage” means the sum of all areas on all floors of a building included within the outside faces of its exterior walls, including all vertical penetration areas for circulation and shaft areas that connect one floor to another, but disregarding cornices, pilasters, buttresses, and similar structures that extend beyond the wall faces. For backlot, “square feet” means the area dedicated by the applicant for backlot use as evidenced on a site plan.

“Taxable year” means the calendar or fiscal accounting period for which a tax is payable [under] pursuant to N.J.S.A. 54A:1-1 et seq., and commencing on or after July 1, 2018, but before July 1, [2023] 2039.

“Taxation” or “Division” means the New Jersey Division of Taxation.

“Tax credit transfer certificate” means the certificate issued by [the Division of] Taxation certifying to the selling business the amounts of film tax credit being sold. The certificate shall state that the transferor waives its right to claim the credit shown on the certificate. The certificate shall [show the fiscal year in which the application was initially approved and] have the same tax credit vintage year as the original tax credit certificate.

“Tax credit vintage year” means {the};

(a) The applicant’s privilege period or taxable year in which the Authority issued the initial approval of the application [and the tax credit may be applied], until the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to applicants exceeds the amounts of tax credits available in a fiscal year, after which “tax credit vintage year” shall mean the next subsequent privilege period or taxable year of the applicant in which tax credits are available{,};

(b) For applications approved on or after January 1, 2026, “tax credit vintage year” means the applicant’s privilege period or taxable year in which the Authority gives final approval; and

(c) For applications that received initial approval prior to January 1, 2026, but have not yet received final approval, the approved applicant may elect upon written notice to the Authority to use the tax credit vintage year at paragraph (b) above.

“Taxpayer” means an applicant, a designated studio partner, a designated film-lease partner facility, or an approved applicant.

“Television series” means a series of one or more television shows, each 22 minutes or more in length.

“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 digital media content production expenses” shall not include costs for intangible personal expenses incurred after February 26, 2024.

“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. “Total film production expenses” shall not include costs for intangible personal expenses incurred after February 26, 2024. For completed applications submitted on or after January 1, 2026, total film production expenses shall not include any costs incurred after film completion, except that deferred compensation may be incurred after film completion.

“Vendor authorized to do business in New Jersey” means a vendor that, at the time the expense was incurred in New Jersey, has obtained authorization to conduct business in this State by filing the appropriate documents with the State of New Jersey Department of the Treasury, Division of Revenue and Enterprise Services.

19:31T-1.3 Eligibility criteria

(a) [A taxpayer] An applicant shall be eligible for the program for film tax credits if the Authority finds that:

i. {The [taxpayer] applicant will incur after} After July 1, 2018[; at]:

i. At least 60 percent of the applicant’s total film production expenses, exclusive of post-production costs, are incurred in New Jersey for

services performed, and goods purchased, through vendors authorized to do business in New Jersey, **including wages and salaries** [or the]; **or**

ii. The qualified film production expenses of the [taxpayer] applicant during **at least one privilege period or** taxable year **incurred in New Jersey** 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; **or**

iii. **For reality shows, at least 60 percent of the applicant's total film production expenses, exclusive of post-production costs, are incurred in New Jersey for services performed, and goods purchased through vendors authorized to do business in New Jersey, including wages and salaries, and the qualified film production expenses of the applicant during at least one privilege period or taxable year incurred in New Jersey 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] applicant submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with N.J.A.C. 19:31T-1.7(c)2{1.7(c)4}; [and]

5. The [taxpayer] applicant complies with the withholding requirements provided for payments to loan out companies, [and] independent contractors, **and any homeowner** in accordance with (c) below[.];

6. At least one principal photography day is shot in New Jersey; and

7. For a studio partner or film-lease production company, the principal photography of the film commenced after the designation of the studio partner or the corresponding film-lease partner facility.

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

1. The} **the** [taxpayer] applicant will incur qualified digital media content production expenses during a privilege period or taxable year, provided that:

i. After July 1, 2018:

i. At least \$ 2,000,000 of the total digital media content production expenses of the [taxpayer] applicant are incurred **in New Jersey** for services performed, and goods purchased, through vendors authorized to do business in New Jersey, **including wages and salaries; provided, however, for the purposes of eligibility, for applications submitted after July 10, 2024, qualified wage and salary payments made to full-time employees working on digital media shall not be deemed an expense incurred for services performed.** {i. At} **In addition, at least 50 percent of the qualified digital media content production expenses of the [taxpayer] applicant are for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;** [and]

ii. At least \$500,000 of the qualified digital media content production expenses of the applicant are incurred in New Jersey for post-production services, including visual effects services, performed at a film-lease production facility or by a studio partner; or

iii. At least \$500,000 of the qualified digital media content production expenses of the applicant are incurred in New Jersey for post-production services, including visual effects services, performed by a qualified independent post-production company;

{iii.} 2. The [taxpayer] applicant submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with N.J.A.C. 19:31T-1.7(c)4; and

{2.} 3. The [taxpayer] applicant complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with (c) below.

(c) [A taxpayer] An **approved applicant** shall withhold from each payment to a loan out company, [or] to an independent contractor, **or, for an applicant for a film tax credit, to a homeowner for the use of a personal residence**, an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the New Jersey Gross Income Tax Act, N.J.S.A.

54A:1-1 et seq., and the [taxpayer] **approved applicant** shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to {chapter} **Chapter 7** of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to {chapter} **Chapter 7** of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the [taxpayer] **approved applicant** withheld. **Notwithstanding any provision of this section to the contrary, qualified film production expenses and qualified digital media content production expenses shall include any payments made by the approved applicant to a loan out company for services performed in New Jersey by individuals who are employees of the loan out company and whose wages and salaries are subject to withholding, but not subject to tax pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state.**

(d) For any applicant applying to be designated as a studio partner, the applicant shall be eligible if the applicant demonstrates to the Authority that the applicant meets the definition of a studio partner for purposes of designation and that it shall satisfy the conditions of approval at N.J.A.C. 19:31T-1.8{(f)}(e) within the prescribed time. No more than three film production companies may be designated as a studio partner.

(e) For any applicant applying to be designated as a film-lease partner facility, the applicant shall be eligible if the applicant demonstrates to the Authority that the applicant meets the definition of a film-lease partner facility and that it shall satisfy the conditions of approval at N.J.A.C. 19:31T-1.8{(f)}(e) within the prescribed time.

1. Except for a production facility, or portion thereof, owned, built, leased, or operated by a film production company designated as a studio partner by the Authority on or before January 3, 2024, in order for a production facility to be designated as a film-lease partner facility, the owner or developer shall accept the acquisition by the Authority, at the Authority's discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the Authority and the film-lease partner facility and on the condition that the Authority's/ may require the applicant to redeem the investment if the applicant is not compliant with the program. The Authority may, at its discretion, accept the offer to purchase the shares of stock by the film-lease partner facility or any other investor in lieu of redemption.

2. No more than three New Jersey production facilities may be designated as a film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or portions thereof, owned, built, leased, or operated by a film production company designated as a studio partner.

(f) For any applicant applying to produce a reality show, the applicant will be eligible for the program if the Authority finds the applicant meets the requirements set forth at (a) above and demonstrates to the Authority that the applicant'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 consists of building A and building B, which are 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.

19:31T-1.4 Application submission requirements

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

1. (No change.)

2. A breakout of projected total film production expenses, excluding pre-production costs, to be incurred, pursuant to N.J.A.C. 19:31T-1.3/(a)1, for services performed and goods purchased through vendors authorized to do business in New Jersey;

3. A breakout of projected qualified film production expenses, pursuant to N.J.A.C. 19:31T-1.3/(a)2, 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. 19:31T-1.6/(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 (the effective date of P.L. 2021, c. 367), a breakout of projected costs, including pre-production and post-production costs, to be incurred, pursuant to N.J.A.C. 19:31T-1.6(a)2/4 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. A description of the film project, which must include:

i.-v. (No change.)

6.-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. {If the applicant is a partnership or limited liability company, a/ A list of members or owners {applying for a tax credit [under] pursuant to this program} of the applicant, including the percentage of ownership interest of each;

[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. 19:31T-1.6(l)1, satisfaction of the requirements [in] at N.J.A.C. 19:31T-1.6(l)1i [through], ii, iii, and iv; and for the increased bonus amount of tax credits pursuant to N.J.A.C. 19:31T-1.6(l)2, satisfaction of the requirements at N.J.A.C. 19:31T-1.6(l)2i through iii;

[11.] 10. If the film production involves an eligible reality show{,}:

i. **For applications submitted prior to the effective date of P.L. 2024, c. 33 (July 10, 2024),** 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

ii. **For applications submitted on or after the effective date of P.L. 2024, c. 33 (July 10, 2024),** evidence that a major linear network or streaming service has commissioned or ordered a minimum of six episodes and has scheduled the reality show to premiere.

11. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

12. Submission of a tax clearance certificate{,}

/13./ 11. A list of all the development subsidies, as defined at N.J.S.A. 52:39-1 et seq., that the {developer} applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;

{14./ 12. If the applicant is seeking a film tax credit as a studio partner:

i. A certification from the *film production company designated as a studio partner* that it remains eligible as a studio partner; and

ii. If the applicant is not the designated studio partner, one of the following:

(1) Written verification that the applicant is a member of the studio partner's group pursuant to N.J.S.A. 54:10A-4.11; or

(2) For "works made for hire" for the studio partner:

(A) Documentation evidencing that the applicant is principally engaged in the production of film and other commercial audiovisual product;

(B) An executed contract with the studio partner to perform film production services for the film on the studio partner's behalf such that the studio partner controls the film or product during preproduction, production, and post-production and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the studio partner pursuant to the provisions of the Federal Copyright Act of 1976, 17 U.S.C. §§ 101 et seq.; and

(C) Opinion of counsel that the executed contract with the studio partner satisfies the criteria at (a)14ii(2)(B) above{,}

(2) If the applicant is an entity unrelated to the studio partner and is principally engaged in the production of the film that is the subject of the application with whom a designated studio partner contracts to perform film production services on its behalf or for its benefit, written consent from the studio partner for the unrelated entity to apply for tax credits and a copy of the production services agreement with the designated studio partner evidencing that the designated studio partner:

(A) Controls such film during pre-production, production, and post-production; or

(B) Controls global distribution rights for the resulting film, provided that the studio partner contracted with the unrelated entity prior to qualified film production expenses being incurred and after the designated studio partner was approved for such designation by the Authority;

{15./ 13. If the applicant is seeking a film tax credit as a film-lease production company:

i. A certification from the film-lease partner facility that it remains eligible as a film-lease partner facility;

ii. {Filming} If the applicant is seeking a film tax credit pursuant to paragraph (a)ii in the definition of New Jersey film-lease production company, the filming schedule including all locations in and out of the State of New Jersey and an executed lease, sublease, license, or letter of intent to occupy production space in a film-lease partner facility during the required principal photography shoot days at the facility. The sublease, license, or letter of intent can be obtained from a tenant or subtenant of the film-lease partner facility;

iii. An executed lease, license, or letter of intent to occupy production space in a film-lease partner facility during the required principal photography shoot days at the facility; and,

iii. If the applicant is seeking a film tax credit pursuant to paragraph (a)iii in the definition of New Jersey film-lease production company, a detailed budget demonstrating that the applicant meets the requirements of that section and an executed lease, sublease, license, or letter of intent to occupy production space in a film-lease partner facility during the time of the required qualified film production expenses at, or for the use of, the film-lease partner facility;

iv. If the applicant is seeking a film tax credit pursuant to paragraph (a)2 in the definition of New Jersey film-lease production company, the lease or sublease for the film-lease partner facility and the contract with the owner or developer of the film-lease partner facility required in that section, which contract shall be dated prior to incurring qualified film production expenses; and

iv/ v. If the applicant is not the film-lease production company, one of the following:

(1) Written verification that the applicant is a member of the film-lease production company's combined group;

(2) Any documentation evidencing the film-lease production company's ownership interest in the applicant and any agreement

evidencing the film-lease production company's operational role in the film production; or

(3) For "works made for hire" for the film-lease production company:

(A) Documentation evidencing that the applicant is principally engaged in the production of film and other commercial audiovisual product;

(B) An executed contract with the film-lease production company to perform film production services for the film on the film-lease production company's behalf such that the designated film-lease production company controls the film or product during pre-production, production, and post-production, and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey studio partner pursuant to the provisions of the Federal Copyright Act of 1976, 17 U.S.C. §§ 101 et seq.; and

(C) Opinion of counsel that the executed contract with the *studio partner* film-lease production company satisfies the criteria at (a)14ii(3)(B) (a)13v(3)(B) above; and

{16.} 14. Any other necessary and relevant information as determined by the Authority for a specific application.

(b) A completed application to be designated as a studio partner shall include:

1. An executed deed, lease, sublease, or purchase contract for the production facility, or letter of intent with a governmental authority for the purchase of property for the purpose of developing a production facility. The executed lease or sublease shall have a term that extends for the commitment period based on the anticipated commencement of the commitment period;

2. A detailed floor plan or, if the production facility comprises multiple buildings, a site plan, indicating the uses of each area, the total square footage of the production facility, and the square footage of any backlot;

3. Evidence, including, but not limited to, a certification, that the applicant has made a commitment to produce films or commercial audiovisual products in New Jersey;

4. Except for an applicant that will execute a purchase contract with a governmental authority, preliminary site plan approval or temporary certificate(s) of occupancy 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. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2; and}

6. Submission of a tax clearance certificate; and;

{7.} 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 facility shall include:

1. An executed lease, sublease, deed, or purchase contract for the production facility. The executed lease or sublease shall have a term that extends for the minimum five-year period;

2. A detailed floor plan or, if the production facility comprises multiple buildings, a site plan, indicating the uses of each area, the total square footage of the production facility and the square footage of any backlot;

3. Preliminary site plan approval or temporary certificate(s) of occupancy 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;

4. Written acceptance by the applicant of the acquisition by the Authority, at the Authority's discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the Authority and the film-lease partner facility; and

{5. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2; and}

6. Submission of a tax clearance certificate; and;

{7.} 5. 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 the **minimum required** [at least \$2,000,000 of] total **and qualified** digital media content production expenses [incurred for services performed and goods purchased through vendors authorized to do business in New Jersey] pursuant to N.J.A.C. 19:31T-1.3(b)1i, ii, or iii;

2. *If the applicant is applying on the basis of services performed by a qualified independent post-production company, the ownership structure of the company and any other evidence that the company meets the definition of a qualified independent post-production company during the time in which the qualified digital media content production expenses were incurred;*

{2.} 3. If applicable pursuant to N.J.A.C. 19:31T-/1.6(b)1i or 2i} 1.6(b)2i or 3i, 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.] {3.} 4. A breakout of projected digital media content production expenses for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;

[3.] {4.} 5. The total number of current full-time or full-time equivalent digital media employees, plans for anticipated new full-time or full-time equivalent employees, and current non-digital media full-time or full-time equivalent employees;

[4.] {5.} 6. A **detailed** description of the [project, which must include an overall summary of] digital media content; [and]

{6.} 7. **If the digital media content relates to any film, a list of all such films;**

[5.] {7.} 8. If the applicant intends to participate in the bonus amount of tax credit for a diversity plan pursuant to N.J.A.C. 19:31T-1.6(l)1, satisfaction of the requirements [under] pursuant to N.J.A.C. 19:31T-1.6(l)1i [through], ii, iii, and iv; *and for the increased bonus amount of tax credits pursuant to N.J.A.C. 19:31T-1.6(l)2, satisfaction of the requirements at N.J.A.C. 19:31T-1.6(l)2i, ii, and iii[.]; and/*

9. A list of all the development subsidies, as defined at N.J.S.A. 52:39-1 et seq., that the developer is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received; and

{8.} 10. Any other necessary and relevant information as determined by the Authority for a specific application.

(e) *For all applicants, a completed application shall also require:*

1. *A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2.1 through 2.7; and*

2. *Submission of a tax clearance certificate.*

19:31T-1.5 Fees

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

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

2. For [projects] applications 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 at application shall be [\$2,500.] \$250.00;

3. For applications 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 applications 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 applications 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 \$10,000;

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

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

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

1. For applications 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 applications 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 applications 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 applications 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 applications 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 \$25,000;

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

7. For applications to be designated as a film-lease partner facility, 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 approved applicants 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 approved applicants 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 approved applicants 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 approved applicants 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 approved applicants with total qualified film production expenses or digital media production expenses of \$30,000,000 or more, the fee to be charged shall be \$25,000.

[(c)] (d) A non-refundable fee [of \$1,000] shall be paid to the Authority upon application for a tax credit transfer certificate pursuant to N.J.A.C. 19:31T-1.10 as follows:

1. For approved applicants 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 approved applicants 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 studio partner or a film-lease production facility 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. 19:31T-1.8(e)3.

(f) A studio partner or a film-lease production facility shall pay to the Authority a non-refundable fee of \$5,000 for each request for any minor administrative changes, additions, or modifications and \$10,000 for each request for any major administrative changes, additions, or modifications, such as those requiring extensive staff

time and Board approval, to the designation as a studio partner or a film-lease production facility.

[(d)] (g) The full amount of direct costs of [any analysis] due diligence, including, but not limited to, debarment/disqualification reviews or other analyses by a third-party retained by the Authority, if the Authority deems such retention to be necessary, shall be paid by the applicant.

19:31T-1.6 Tax credit amounts; bonus amount; carryforward of tax credits

(a) [A taxpayer] **An approved applicant**, upon final approval of an application to the Authority and the Director for film tax credits pursuant to N.J.A.C. 19:31T-1.7(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., [in an amount equal to 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] corresponding to the tax credit vintage year, which shall be a privilege period or taxable year commencing on or after July 1, 2018, but before July 1, 2039, in an amount equal to:

1. For completed applications received prior to July 2, 2021, 35 percent of the qualified film production expenses of the approved applicant 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 completed applications received prior to January 7, 2021, 30 percent of the qualified film production expenses not included at (a)1 above, including qualified wage and salary payments.

3. For completed applications received on or after January 7, 2021, and prior to July 2, 2021, 35 percent of the qualified film production expenses of the approved applicant during a privilege period or taxable year.

4. For completed applications received on or after July 2, 2021, the following percent of the qualified film production expenses of the approved applicant during a privilege period or taxable year:

i. For such expenses 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:

(1) For completed applications received after July 6, 2023, 35 percent for applications from film-lease production companies and studio partners; and

(2) For all other completed applications, 30 percent.

ii. For all other expenses, including qualified wage and salary payments:

(1) For completed applications received after July 6, 2023, 40 percent for applications from film-lease production companies and studio partners; and

(2) For all other completed applications, 35 percent.

5. For purposes of this subsection, wages, salaries, and other compensation shall be considered Statewide expenses.)

(b) [A taxpayer] **An approved applicant**, upon final approval of an application to the Authority and the Director for digital media tax credits pursuant to N.J.A.C. 19:31T-1.7(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., corresponding to the tax credit vintage year, which shall be a privilege period or taxable year commencing on or after July 1, 2018, but before July 1, 2039, in an amount equal to [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.];

1. For completed applications received on or after July 10, 2024:

i. Forty percent of the qualified digital media content production expenses of the approved applicant during a privilege period or taxable year that are incurred in New Jersey for post-production services,

including visual effects services, performed at a film-lease partner facility or are incurred by a studio partner; and

ii. Thirty-five percent of the qualified digital media content production expenses of the approved applicant during a privilege period or taxable year that are incurred in New Jersey for post-production services, including visual effects services, and for which post-production services are performed by a qualified independent post-production company.

{1.} 2. For completed applications received prior to January 12, 2022:

i. Twenty-five percent of the qualified digital media content production expenses of the approved applicant 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{,}; and

ii. Twenty percent of the qualified digital media content production expenses during a privilege period or taxable year of the approved applicant not included at {b)1i} (b)2i above, *including qualified wage and salary payments.*

{2.} 3. For completed applications received on or after January 12, 2022, but prior to July 10, 2024:

i. Thirty-five percent of the qualified digital media content production expenses of the approved applicant 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{,}; and

ii. Thirty percent of the qualified digital media content production expenses during a privilege period or taxable year of the approved applicant not included at {b)2i} (b)3i above, *including qualified wage and salary payments.*

{3. For purposes of this subsection, wages, salaries, and other compensation shall be considered Statewide expenses pursuant to (b)1ii and 2ii above.}

(c) No tax credit shall be allowed pursuant to this subchapter for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax return filed with the Director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the privilege period or taxable year for which a tax credit authorized pursuant to this subchapter is allowed. **No tax credit shall be allowed for expenses in an application if it has already been included in the calculation of an award pursuant to (a) or (b) above.**

(d) A business that is not a “taxpayer” as defined and used in **the Corporation Business Tax Act**, N.J.S.A. 54:10A-1 et seq., and, therefore, is not directly allowed a credit [under] **pursuant to** this subchapter, but is a business entity that is classified as a partnership for Federal income tax purposes and is ultimately owned by a business entity that is a “corporation” as defined [in] at N.J.S.A. 54:10A-4c, or a limited liability company formed [under] **pursuant to** the Revised Uniform Limited Liability Company Act, N.J.S.A. 42:2C-1 et seq., or qualified to do business in this State as a foreign limited liability company, with one member, and is wholly owned by the business entity that is a “corporation” as defined [in] at N.J.S.A. 54:10A-4c, but otherwise meets all other requirements of this subchapter, shall be considered an eligible applicant [and “taxpayer” as that term is used in this section] **pursuant to this program.**

(e) A business entity that is not a gross income “taxpayer” as defined and used [in] at N.J.S.A. 54A:1-1 et seq., and, therefore, is not directly allowed a credit [under] **pursuant to** this subchapter, but otherwise meets all the other requirements of this subchapter, shall be considered an eligible applicant [and “taxpayer” as that term is used in this section] **pursuant to this program**, and the application of an otherwise allowed credit amount shall be distributed to appropriate gross income taxpayers pursuant to the other requirements of this subchapter.

(f) A business entity that is classified as a partnership for Federal income tax purpose shall not be allowed a tax credit pursuant to this

section directly, but the amount of the tax credit of a **gross income** taxpayer in respect of a distributive share of entity income shall be determined by allocating to the **gross income** taxpayer that proportion of the tax credit acquired by the entity that is equal to the **gross income** taxpayer’s share, whether or not distributed, of the total distributive income or gain of the entity for its taxable year ending within or with the **gross income** taxpayer’s taxable year.

(g) A New Jersey S Corporation shall not be allowed a tax credit pursuant to this [section] **subchapter** directly, but the amount of tax credit of a **gross income** taxpayer in respect of a pro rata share of S Corporation income, shall be determined by allocating to the **gross income** taxpayer that proportion of the tax credit acquired by the New Jersey S Corporation that is equal to the **gross income** taxpayer’s share, whether or not distributed, of the total pro rata share of S Corporation income of the New Jersey S Corporation for its privilege period ending with the **gross income** taxpayer’s taxable year.

(h) (No change.)

(i) The amount of the tax credit applied [under] **pursuant to** this section against the tax imposed pursuant to N.J.S.A. 54:10A-5, for a privilege period, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the **corporate business** taxpayer to an amount less than the statutory minimum provided [in] at N.J.S.A. 54:10A-5.

(j) The amount of the tax credit applied [under] **pursuant to** this section against the tax otherwise due [under] **pursuant to** N.J.S.A. 54A:1-1 et seq., for a taxable year, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the **gross income** taxpayer to an amount less than zero.

(k) The amount of tax credit otherwise allowable [under] **pursuant to** this section that cannot be applied for the taxable year due to the limitations of this subsection or [under] **pursuant to** other provisions [of] at N.J.S.A. 54:10A-1 et seq., or 54A:1-1 et seq., may be carried forward, if necessary, to the seven privilege periods or taxable years following the privilege period or taxable year for which the credit was allowed.

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

1. [A taxpayer] **An approved applicant** 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., in an amount equal to two percent of the qualified film **production expenses** or the **qualified digital media content production expenses**. *For applications submitted on or after July 10, 2024, an increase of four percent of the qualified digital media content production expenses*, provided that shall be allowed. *In all cases, the application /is/ shall be* accompanied by a diversity plan, outlining, *in relation to the total film production expenses or total digital media content production expenses*:

i. The intention to prioritize the hiring of minority persons and women in an amount of not less than 15 percent **for applications approved prior to February 26, 2024, and 25 percent for applications approved thereafter** of the total hired for the qualified film or digital media production;

ii.-iii. (No change.)

iv. Whether the **approved** applicant intends to participate, or has participated, in training, education, and recruitment programs that are organized in cooperation with State colleges and universities, labor organizations, and the motion picture industry and are designed to promote and encourage the training and hiring of minority persons and women.

[2. The tax credit allowed pursuant to (a) above against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due for the taxable year under N.J.S.A. 54A:1-1 et seq., shall be in an amount equal to 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.

3. The tax credit allowed pursuant to (b) above against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due under N.J.S.A. 54A:1-1 et seq., shall be in an amount equal to 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.]

2. {The} *For applications submitted on or after January 12, 2022, the amount of the increase to a tax credit allowed pursuant to (l)1 above shall increase to four percent of the qualified film /or digital media content/ production expenses of the approved applicant if the diversity plan, in addition to meeting the requirements at (l)1 above, outlines specific goals that include hiring no less than 25 percent of persons as performers, excluding background actors and extras with no spoken lines, in the film /or digital media production/ who:*

- i. Are women or members of a minority group;
- ii. Have been residents of New Jersey for at least 12 months preceding the beginning of filming or recording; and
- iii. Are members of a bona fide labor union representing film and television performers.

19:31T-1.7 Evaluation process {for tax credits/; /initial/} approval {for tax credits/} of award of tax credits[; appeals]

(a) {Applications} *Completed applications for /film/ tax credits* shall be submitted to the {Commission which, upon review for content eligibility, will/ **Authority**:

1. For completed applications for film tax credits, the Authority shall forward the application to the {Authority with the Commission's recommendation} Commission for its review for content eligibility.

{1.} 2. 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 caps [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] at N.J.A.C. 19:31T-1.11.

{2.} 3. 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 content production expenses are reasonable based on industry standards.**

{3.} 4. The Authority shall issue an initial approval letter [received by] to the [taxpayer] **approved applicant** that 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. **The approval letter shall constitute the non-binding, administrative pre-certification process for potentially eligible projects.** Failure to submit timely[,] periodic reports that demonstrate satisfactory progress or timely final documentation may lead to the forfeiture of the tax credit.

(b) {In general, the/ **The** final documentation required [by] pursuant to (c) below shall be submitted to the Authority *as follows:*

1. *For approved applications with a tax credit vintage year based on paragraph (a) of the definition of "tax credit vintage year", no later than four years after the Authority's initial approval if the [taxpayer] **approved applicant** is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the [taxpayer] **approved applicant** is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.*

2. *For approved applications with a tax credit vintage year based on paragraph (b) of the definition of "tax credit vintage year," no later than three years after the Authority's initial approval. The Authority shall grant no more than two six-month extensions of this deadline.*

(c) Upon completion of {total film production expenses or} the total digital media content production expenses **for the privilege period or taxable year identified in the initial approval** [or the incurrence of qualified film production expenses during a privilege period or taxable year that exceed \$1,000,000 per production] **or at film completion**, the [taxpayer] **approved applicant** 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/:

i. **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;**

ii. **Evidence satisfactory to the Commission that the film includes marketing materials, as deemed appropriate, pursuant to N.J.A.C. 19:31T-1.3(a)3; and**

iii. **Evidence of film completion;**

2. If the approved applicant is a studio partner or film-lease production facility, a certification from the designated studio partner or film-lease partner facility that it has continued to satisfy the requirements of a studio partner or film-lease production facility from the commencement of principal photography;

[2. The Authority shall review and approve actual] 3. **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]

4. A report prepared by an independent certified public accountant licensed in the State verifying the expenses claimed by the **approved** applicant. The report shall be prepared by the independent certified public accountant, pursuant to agreed-upon procedures prescribed by the Authority and the Director[; and].

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] **approved applicant, and the date of the last total film production expense excluding any deferred compensation payments, 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;

ii. In the report, the approved applicant'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 approved applicant'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 independent certified public accountant, in writing, to the approved applicant, the Authority, and the Director, and the approved applicant 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} **the Program**;

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**:

iv. If the approved applicant is a studio partner and the qualified film production expenses include deferred compensation payments based on work or services provided on a production, the report shall include information necessary and relevant as determined by the Authority to demonstrate such deferred compensation payments; and

v. If the approved applicant is a film-lease production company pursuant to subparagraph (a)ii in the definition of New Jersey film-lease production company, the report shall also include verification of {principle} principal photography shoot days as necessary to demonstrate eligibility as a film-lease production company;

{5. For approved applicants that received initial approval for the production of a reality show:

i. The report required at (c)4 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 approved applicant shall no longer be eligible for tax credits for the production;

ii. The temporary certificate of occupancy;

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

iv. The executed deed, lease, or sublease evidencing site control. If the approved applicant 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 approved applicant 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.] 6. With respect to a film, evidence satisfactory to the Commission that the film includes marketing materials, as deemed appropriate, pursuant to N.J.A.C. 19:31T-1.3(a)3;]

[4.] {7.} 5. If the approved applicant was initially approved for a bonus amount of tax credit for a diversity plan pursuant to N.J.A.C. 19:31T-1.6(l)[1], evidence of achieving the relevant percentage in the diversity plan or good faith efforts to undertake the diversity plan. The bonus amount shall not be included in the amount of the final approval if the approved applicant fails to submit satisfactory evidence to the Authority and the Division;

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

{8.} 6. If the approved applicant is a film-lease production company, the executed lease, sublease, or license to occupy production space in a film-lease partner facility;

7. If the approved applicant is seeking tax credits on the basis of services performed by a qualified independent post-production company, a certification from the approved applicant that the independent post-production company met the definition of a qualified independent post-production company during the time in which the qualified digital media content production expenses were incurred;

{9.} 8. A certification from the approved applicant that the information provided pursuant to this subsection is true {pursuant to} under the penalty of perjury; and

{10.} 9. Any other information necessary for the Authority and the Director to determine compliance with this program.

(d) Approved applicants that received initial approval for a reality show shall not be required to demonstrate evidence that all episodes commissioned or ordered have been filmed or produced or that the reality show has premiered.

{(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 independent certified public accountant's [certification] report, 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] approved applicant, 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 approved applicant. The [taxpayer's] approved applicant's use of the tax credit shall be limited [by] pursuant to N.J.A.C. 19:31T-1.9/(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.]

{(f)} (g) If a studio partner received a tax credit for qualified film production expenses that included deferred compensation payments based on work or services provided on a production, the studio partner shall submit a supplemental report prepared by a certified public accountant pursuant to agreed-upon procedures prescribed by the Authority and the Director no later than two years after the date on which the production concludes, as established by the date of {the last total} film {production expense, excluding any deferred compensation payments} completion.

19:31T-1.8 Evaluation process and designation of studio partner and film-lease partner facility

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

(b) The completed application for designation as a studio partner or film-lease partner facility shall be considered by the Authority for approval on a first in time basis. If interest in a studio partner or film-lease partner facility 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.

(c) To assist the Authority in designating a studio partner or film-lease partner facility, the Authority may employ an independent consultant, at the cost of the applicant, or may consult with the Commission.

(d) Upon review of the completed application, the Authority's Board shall consider whether to designate the applicant as a studio partner or film-lease partner facility pursuant to N.J.A.C. 19:31T-

1.3(d) and (e), respectively. The designation shall expire at the end of the studio partner's commitment period.

1. Effective upon designation as a studio partner, a film production company shall be eligible for a credit as a studio partner pursuant to this subchapter, provided the film production company otherwise complies with the eligibility requirements of the program.

2. A film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the Authority provided final approval of such agreement occurs on or before the date on which production commences at the facility.

3. For completed applications approved on or after July 10, 2024, a film-lease production company may apply for film tax credits upon the designation of the corresponding film-lease partner facility, if the film-lease production company applies pursuant to paragraph (a)2 in the definition of New Jersey film-lease production company.

(e) Following approval by the Authority's Board, the Authority shall require the approved applicant to execute and return an approval letter to the Authority. The Board's designation shall be subject to conditions subsequent 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; executed financing commitments, if applicable; and evidence of site plan approval or executed redevelopment agreement with a governmental entity, as applicable; all required planning and zoning approvals and permits, and any other required permits; and evidence of site control of the production facility within one year from Board approval of the designation. The Authority /shall grant no more than two/ may grant six-month extensions of this deadline.

2. As set forth at N.J.A.C. 19:31T-1.10/1.12, 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 production facility does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.

3. A studio partner or film-lease partner facility shall submit the final floor plan, or site plan if there are multiple buildings, indicating the uses and square footage of each area and one or more temporary certificates of occupancy for the minimum required square footage within 36 months from the later of Board approval of the designation and February 26, 2024. The Authority /shall grant no more than two/ may grant 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 approved applicant does not provide the required documents within the period of time prescribed /at/ in this subsection.

(f) When deciding whether to make an equity investment in a film-lease partner facility and the terms of such investment, the Authority shall consider such factors as the financial structure of the production facility, the risk of the investment in the production facility, developer contributed capital or equity, the magnitude of State or other governmental support, the reasonable and appropriate return on investment to the developer and the Authority, and the terms offered to other equity owners and investors.

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

1. The commencement and end of the commitment and eligibility periods; 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 unless the lease, sublease, or license is to another entity that is a studio partner, when applying for a film tax on the basis of the designated studio partner;

ii. Not sell any part of the 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. Unless otherwise allowed in this subchapter, 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.

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

1. The commencement of the ownership, lease, or operation and if not owned, the length of the lease or other site control agreement; and

2. An agreement that the film-lease partner facility shall maintain the lease or ownership of the production facility in order to maintain the designation. The film-lease partner facility shall:

i. Not lease, sublease, or license any part of the production facility for uses other than film production uses such that the film-lease partner facility occupies less than the minimum amount of square feet;

ii. Absent the Authority's written consent, not sell any part of the production facility, provided that a film-lease partner facility 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. Unless otherwise allowed in this subchapter, not receive any tax credits pursuant to this program for any activity of its occupant, tenant, or subtenant.

(i) The award agreement for a studio partner and a film-lease partner facility shall also include:

1. A method for the approved applicant to certify that it has met the eligibility requirements of the program;

2. A provision permitting an audit of evidence and documentation of the approved applicant supporting any submissions demonstrating eligibility and site visits, as the Authority deems necessary;

3. A provision permitting the Authority to amend the agreement;

4. A provision establishing the conditions pursuant to which the Authority, the approved applicant, or both parties, may terminate the agreement;

5. Indemnification and insurance requirements from the approved applicant;

6. Events that would trigger forfeiture, reduction, or recapture of tax credits, including, but not limited to, provisions in this subchapter; and

7. Default and remedies, including, but not limited to, a default if an approved applicant made a material misrepresentation on its application.

19:31T-1.9 Recapture and reduction of tax credits

(a) If the studio partner was designated on the basis of a lease of a production facility that is a portion of a film-lease production facility before the film-lease partner facility receives a temporary certificate of occupancy and fails to occupy such facility:

1. The Authority shall revoke the designation of the studio partner;

2. All the studio partner's films, and all films from film production companies approved for film tax credits as studio partners on the basis of the designated studio partner, for which an initial approval has been given, but for which the Authority has not given final approval, shall terminate as a studio partner film project and shall be considered as a film project without the benefit of a studio partner designation; and

3. The Authority may recapture from the studio partner the portion of the tax credit that was only available to the studio partner or any film production company by virtue of the studio partner's designation as a studio partner, except that the Authority shall not recapture any tax credits within one year after the approval of the studio partner designation.

{(a)} (b) {If a} For all studio partners other than those described at (a) above, if a designated studio partner fails to occupy the production facility developed, purchased, or leased as a condition of designation as a studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a studio partner, the Authority shall revoke the designation of the studio

partner and recapture from the studio partner the portion of the tax credit {from the studio partner} that was only available to the studio partner or any film production company by virtue of the studio partner's designation as a studio partner, and all the studio partner's films, and all films from film production companies approved for a film tax credit as studio partners on the basis of the designated studio partner, for which an initial approval has been given, but for which the Authority has not given final approval, shall terminate.

{(b)} (c) If a film-lease partner facility fails to operate the production facility developed, purchased, or leased as a condition of designation as a film-lease partner facility or otherwise fails to satisfy the conditions for designation as a film-lease partner facility for the duration of the five-year period, the Authority {shall} may revoke the designation of the film-lease partner facility and recapture from the film-lease partner facility the portion of the tax credit {from the film-lease partner facility} that was only available to film-lease production companies by virtue of the film-lease partner facility's designation as a film-lease partner facility, and all films from film-lease production companies that relied on the film-lease partner facility designation for which an initial approval has been given, but for which the Authority has not given final approval, shall {terminate} be reduced to eliminate the portion of the tax credits only available by virtue of the film-lease partner facility's designation as a film-lease partner facility.

(d) If a film-lease production company that was issued a film tax credit pursuant to paragraph (a)2 in the definition of New Jersey film-lease production company has failed to meet the qualifications of a film-lease production company or otherwise comply with the applicable provisions in the definition of New Jersey film-lease production company:

1. All the film-lease production company's films for which an initial approval has been given, but for which the Authority has not given final approval, shall terminate as a film-lease production company film project and shall be considered a film project without the benefit of any film-lease partner facility designation; and

2. The Authority may recapture from the film-lease production company the portion of the tax credit that had been awarded to the film-lease production company that was only available to the film-lease production company on the basis of the designation of a film-lease partner facility, except that the Authority shall not recapture any tax credits within one year of the date of the film-lease production company's lease with the film-lease partner facility.

{(c)} (e) If an approved applicant has received tax credits on the basis of deferred compensation and the supplemental report from the independent certified public accountant does not evidence actual payment of the entire amount of deferred compensation, the Authority shall recapture the amount of the tax credit that was based on the projected deferred compensation that was not evidenced. If the approved applicant fails to submit the supplemental report by the date required, the Authority shall recapture all of the tax credit based on the projected deferred compensation.

{(d)} (f) If, at any time, the Authority determines that a designated studio partner or film-lease partner facility made a material misrepresentation on its application or any submission pursuant to this program, the Authority shall revoke the designation and the studio partner or film-lease partner facility shall forfeit, and the Authority may recapture any or all of, the tax credits awarded to the studio partner or any film-lease production company or film production company approved for tax credits by virtue of the designation of the studio partner or film-lease partner facility, which shall be in addition to any other remedies in any approval letter, award agreement, and any criminal or civil penalties to which the approved applicant and the respective officer may be subject.

{(e)} (g) If, at any time, the Authority determines that an approved applicant for a tax credit made a material misrepresentation on the approved applicant's application or any submission pursuant to this program, the approved applicant shall forfeit, and the Authority may recapture any or all of, the tax credits awarded pursuant to the program, which shall be in addition to any other remedies in any approval letter, award agreement, and any criminal or civil penalties

to which the approved applicant and the respective officer may be subject.

(h) If, based on new information, the Authority determines that a reduction, forfeiture, or recapture should have been applicable pursuant to this section, the Authority shall recapture the tax credits for the relevant tax period(s).

(i) If all or part of a tax credit sold or assigned pursuant to N.J.A.C. 19:31T-1.10 is subject to recapture, then the Authority shall pursue recapture from the corresponding studio partner, film-lease partner facility, or film production company, and not from the purchaser or assignee of the tax credit transfer certificate.

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

19:31T-/1.8/1.10 Application for tax credit transfer certificate

(a) Tax credits, upon receipt thereof by [a taxpayer] an approved applicant 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. 19:31T-/1.9(a)1.11(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] An approved applicant shall apply to the Authority and the Director for a tax credit transfer certificate, in lieu of the [business] approved applicant being allowed any amount of the credit against the tax liability of the [taxpayer] approved applicant. 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] approved applicant, naming the transferee. The certificate issued to the [business] approved applicant shall include a statement waiving the [taxpayer's] approved applicant's right to claim that amount of the tax credit against the taxes that the [business] approved applicant 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. 19:31T-/21.6)1.6.

(b) The sale or assignment of any amount of a tax credit transfer certificate allowed [under] pursuant to this section shall not be exchanged for consideration received by the [taxpayer] approved applicant of less than 75 percent of the transferred credit amount. In order to evidence this requirement, the [taxpayer] approved applicant shall submit to the Authority an executed form of standard selling agreement that evidences that the consideration received by the [taxpayer] approved applicant is not less than 75 percent of the transferred tax credit.

(c) In the event that the [taxpayer] approved applicant is a partnership and chooses to allocate the income realized from the sale of the tax credits other than in proportion to the partners' distributive shares of income or gain of the partnership, the selling agreement shall set forth the allocation among the partners that has previously been submitted to the Director of the Division of Taxation in the Department of the Treasury pursuant to N.J.A.C. 19:31T-1.6.

(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; and
4. The State tax against which the transferee may apply the tax credit.

19:31T-/1.9/1.11 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. 19:31T-1.6(a) to apply against the tax imposed pursuant to 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., shall [not exceed a] be allowed in the fiscal year of initial approval, except as provided at (a)4 below, as follows:

1. Pursuant to N.J.S.A. 54:10A-5.39b.e/(1) and 54A:4-12b.f/(1), and except as provided at N.J.S.A. 34:1B-362.d and (a)2 below, to approved applicants, other than studio partners and film-lease production companies, 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] 2040, as indicated by [fiscal year in which the tax credit was initially approved] the tax credit vintage period, to apply against the tax imposed pursuant to 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.].

2. Pursuant to N.J.S.A. 34:1B-362.d, notwithstanding the provisions of any other law to the contrary, of the uncommitted balance of the total value of tax credits authorized for award by the Authority pursuant to N.J.S.A. 34:1B-362.b(1)(f) to the New Jersey Aspire Program Act, N.J.S.A. 34:1B-322 through 335, and to the Emerge Program Act, N.J.S.A. 34:1B-336 through 348, \$300,000,000 shall also be made available for tax credits allowed in fiscal year 2025.

{2.}3. For studio partners and film-lease production companies:

i. Pursuant to N.J.S.A. 54:10A-5.39b.e/(1) and 54A:4-12b.f/(1), except as provided at {(a)2ii} (a)3ii and iii below, the cumulative total shall not exceed \$100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of \$150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to 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.

ii. Pursuant to N.J.S.A. 34:1B-362.d, notwithstanding the provisions of any other law to the contrary, of the uncommitted balance of the total value of tax credits authorized for award by the Authority pursuant to N.J.S.A. 34:1B-362.b(1)(f) to the New Jersey Aspire Program Act, N.J.S.A. 34:1B-322 through 34:1B-335, and to the Emerge Program Act, N.J.S.A. 34:1B-336 through 34:1B-348, \$250,000,000 shall also be made available for tax credits allowed in fiscal years 2023, 2024, and 2025.

iii. Pursuant to N.J.S.A. 34:1B-362.b(1)(i), 54:10A-5.39b.e/(1), and 54A:4-12b.f/(1), beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for studio partners pursuant to {(a)2i} (a)3i and ii above, up to an additional \$400,000,000 may be made available annually to studio partners and \$250,000,000 for film-lease production companies, in the discretion of the Authority, 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 N.J.S.A. 34:1B-362.b(1)(i), from the tax credits made available pursuant to N.J.S.A. 34:1B-362.b(1)(f) to the New Jersey Aspire Program Act, N.J.S.A. 34:1B-322 through 34:1B-335, and to the Emerge Program Act, N.J.S.A. 34:1B-336 through 34:1B-348, not including tax credits awarded for transformative projects.

{3.} 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. 19:31T-1.6(a) exceeds the amount of tax credits available in that fiscal year, then [taxpayers] applicants 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,] applications approved by the Authority, provided the applications otherwise {satisfies} satisfy the requirements of the program, and shall be allowed 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. 19:31T-1.6(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. 19:31T-1.6(b) to apply against the tax imposed pursuant to 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., shall {not exceed a} be allowed in the fiscal year of initial approval as follows:

1. Pursuant to N.J.S.A. 54:10A-5.39b.e and 54A:4-12b.f, the cumulative total of [\$10,000,000] \$30,000,000 in fiscal year 2019, and in each fiscal year thereafter prior to fiscal year [2024] 2040, 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 the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.].

2. Beginning in the fiscal year beginning July 1, 2024, in addition to the total amount of tax credits and tax credit transfer certificates allowed to approved applicants for privilege periods or taxable years commencing during a single fiscal year pursuant to (b)1 above, up to an additional \$100,000,000 may be made available, at the discretion of the Authority for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, from the funds made available to approved applicants for film tax credits other than studio partners and film-lease production companies pursuant to N.J.S.A. 34:1B-362.d(3) and (a)2 above.

3. 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. 19:31T-1.6(b) exceeds the amount of tax credits available in that year, then [taxpayers] applicants 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,} have their applications approved by the Authority, provided the applications otherwise satisfy the requirements of this section, and shall be allowed 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. 19:31T-1.6(b) are not in excess of the amount of credits available.

(c) Notwithstanding any provision at (a) above to the contrary, for any fiscal year in which the amount of tax credits approved to studio partners, film-lease production companies, or approved applicants other than studio partners and film-lease production companies pursuant to N.J.A.C. 19:31T-1.6(a) and N.J.S.A. 54:10A-5.39b(1)(a)/5.39b.a and 54A:4-12b(2)(a)/12b.a 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 studio partners, film-lease production companies, or approved applicants other than studio partners and film-lease production companies 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 approved applicant is not able to redeem or transfer to another taxpayer pursuant to this subchapter, and shall increase the cumulative total amount of tax credits permitted to be approved for studio partners, film-lease production companies, or applicants other than studio partners and film-lease production companies in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer.

(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. 19:31T-1.6(b) and N.J.S.A. 54:10A-5.39b(1)(b)/5.39b.b and 54A:4-12b(2)(b)/12b.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 approved applicant 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.

(e) Notwithstanding any provision of this section or other law to the contrary, if a film production company designated as a studio partner ceases to qualify for its designation as a studio partner and becomes designated as a film-lease partner facility, the Authority shall reduce the cumulative total amount of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to studio partners in each fiscal year and shall increase the cumulative total amount of tax credits permitted to be approved for film-lease production companies in each fiscal year by a corresponding amount equal to the lesser of:

1. One third; and
2. The greater of the percentage of the studio partner's number of film tax credit applications out of the volume of applications submitted by studio partners and film-lease production companies, the percentage of the cumulative total amount of tax credits approved for the studio partner out of the cumulative total amount of tax credits approved to studio partners and film-lease production companies in the prior fiscal year, and the percentage of the studio partner's square footage out of the total square footage of production facility space occupied in the State by studio partners and production facilities.

19:31T-1.10/I.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, [will apply to productions undertaken with financial assistance received under the Garden State Film and Digital Media Jobs Program] shall apply to the qualified film production expenses and the qualified digital media content production expenses, including, but not limited to, the following:

1. Construction contracts for work performed on or after the Authority's initial approval; and
2. Construction contracts for work performed before the application and after February 26, 2024.

(b) For studio partners and film-lease partner facilities, the Authority's affirmative action requirements at N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3 and prevailing wage requirements at N.J.S.A. 34:1B-5.1 and N.J.A.C. 19:30-4 shall apply to *construction contracts* for work performed at the production facility after the later of February 26, 2024, and the Authority's approval of the designation.

19:31T-1.13 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.

19:31T-1.11/I.14 (No change in text.)
