

PARTS 10 THROUGH 14 OF THE REGULATIONS OF THE COMMISSIONER OF ECONOMIC DEVELOPMENT ARE HEREBY AMENDED TO READ AS FOLLOWS:

PART 10

DEFINITIONS AND ZONE DESIGNATION APPLICATION PROCESS

10.1 Purpose and general description.

The purpose of these regulations is to set forth the application process for designation of areas as [economic development zone] empire zones pursuant to article 18-B of the General Municipal Law, as well as to provide definitions of terms pertinent to this chapter. The Commissioner of Economic Development shall announce periodically the commencement of and timetable for rounds of competition for designation of [economic development zone] empire zones. The application process shall be conducted as prescribed in application forms prepared and distributed by the Commissioner, who shall receive and review the applications and make recommendations to the [economic development zone] empire zones designation board.

10.2 Definitions.

(a) Applicant means the county, city, town or village submitting an application in the manner authorized by local law for designation of an area as an [economic development zone] empire zone.

(b) Applicant municipality means the county, city, town or village that applied for and received empire zone designation.

(c) Chief executive means (i) a county executive or manager of a county; (ii) in a county not having a county executive or manager, the chairperson or other presiding officer of the county legislative body; (iii) a

mayor of a city or village, except where a city or village has a manager, it shall mean such a manager; or (iv) a supervisor of a town, except where a town has a manager, it shall mean such manager.

[b](d) Commissioner means the Commissioner of Economic Development.

[c](e) Community development projects [shall] mean projects sponsored by not-for-profit organizations which have been approved by the zone board, which will advance the zone development plan. For purposes described in sections 210.20, 606(1), 1456(d) and 1511(h) of the Tax Law, such projects shall be limited to child care programs serving zone residents and businesses; community development projects in direct support of economic development and business revitalization activities, such as commercial revitalization projects; and business development activities of local development corporations.

(f) Concurring municipality means a city, town or village that is required to agree with the applicant municipality's proposed addition or removal of empire zone acreage from within such city, town or village's municipal borders.

(g) Cost-benefit analysis means a method of determining whether to certify a business enterprise based on the business enterprise's projected job creation and/or investment in the zone, versus the total amount of empire zone tax benefits the business enterprise will potentially be allowed to use and have refunded to it and shall be a ratio of at least 10:1 for manufacturing enterprises and 20:1 for all other business enterprises, the numerator of which is the sum of (i) the estimated value of all wages and benefits paid for the first three years of certification to all existing and projected employees of the business enterprise in the zone, and (ii) the estimated value of capital investments for the first three years of certification in the zone, and the denominator of which is the estimated amount of total empire zone tax benefits that may be used and may be refunded for the first three years of certification.

[d](h) Department means the Department of Economic Development.

[e](i) [Economic development zone] Empire zone means an area within the State that has been designated as an [economic development zone] empire zone[s] pursuant to article 18-B of the General Municipal Law.

(j) Zone equivalent area means an area designated as such pursuant to former subdivision (bb) of section nine hundred fifty-nine of the General Municipal Law.

[f](k) [Economic development zone] Empire zone capital tax credits or zone capital tax credits means tax credits available pursuant to sections 210.20, 606(1), 1456(d) and 1511(h) of the Tax Law.

[g](l) Human resource development [shall] means job preparation and placement, skills training, [and] education for zone residents and employees of zone businesses, child and family care services and facilities, and activities to improve the health benefits and other benefits provided by zone businesses to their employees.

[h](m) Local [economic development zone] empire zone administrative board means the entity designated by the applicant that is responsible for recommending business enterprises for certification pursuant to section 959(a)(iii) of the General Municipal Law and for monitoring, evaluating and coordinating all [economic development zone] empire zone benefits on behalf of the applicant. Such entity shall consist of at least six members, [none of whom shall be the local economic development zone certification officer], and shall be representative of local businesses, organized labor, community organizations, financial institutions, local educational institutions and residents of the [economic development zone] empire zone.

[i] Local economic development zone certification officer means the individual designated by the applicant who is responsible for jointly certifying and decertifying together with the Commissioner and the Commissioner of Labor those business enterprises eligible to receive benefits pursuant to article 18-B of the General Municipal Law.]

[j](n) Minority business enterprise [means any business enterprise which is at least 51 percent owned, or in the case of a publicly owned business, at least 51 percent of the common stock or other voting interests of which is owned, by one or more United States citizens or permanent resident aliens who are black, Hispanic

persons of Mexican, Puerto Rican, Dominican , Cuban, Central or South American or either Indian or Hispanic origin, regardless of race, Asian, or American Indian or Alaskan native, and such ownership has and exercises the authority to independently control the day-to-day business decisions of the entity.] shall have the same meaning as provided in section 310 of the Executive Law.

(o) Minority group member shall have the same meaning as provided in Section 310 of the Executive Law.

(p) Empire zone capital tax credits or zone capital tax credits means tax credits available pursuant to sections 210.20, 606(1), 1456(d) and 1511(h) of the Tax Law.

[k](q) Qualified investment means the contribution of property to a corporation in exchange for original issue capital stock or other ownership interest, the contribution of property to a partnership in exchange for an interest in the partnership, and similar contributions to any other type of business entity not in corporate or partnership form in exchange for an ownership interest in such an entity.

[l](r) [Women] Women-owned business enterprise [means any business enterprise which is at least 51 percent owned, or in the case of a publicly owned business, at least 51 percent of the common stock or other voting interests of which is owned, by one or more United States citizens or permanent resident aliens who are women, regardless of race or ethnicity, and such ownership interest is real, substantial and continuing, and the ownership has and exercises the authority to independently control the day-to-day business decisions of the entity.] shall have the same meaning as provided in section 310 of the Executive Law.

[m](s) Zone administrative entity [shall] means a community-based local development corporation or entity contracting with the local [economic development zone] empire zone board pursuant to section 963(a)(viii) of the General Municipal Law or the municipality in which the zone is located in those instances where the municipality actively participates in the local administration of the zone program.

[n](t) Zone capital corporation means an entity incorporated for the purpose of raising funds through private and public grants, donations or investments, to be used in making investments in and loans to certified zone

businesses to encourage the establishment or expansion of such businesses, thereby providing new job opportunities within an [economic development zone] empire zone.

(u) Regionally significant project means: (i) a manufacturer projecting the creation of fifty or more net new jobs in the State of New York; (ii) an agri-business or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more net new jobs in the State of New York, (iii) a financial or insurance services or distribution center creating three hundred or more net new jobs in the State of New York or (iv) a clean energy research and development enterprise. Such business shall be eligible as a regionally significant project as determined by the local empire zone administrative board and the Commissioner, provided however, to be eligible as a regionally significant project the business seeking such status must be a business that exports a substantial portion of its products or services outside of the State and where at least sixty percent of the business's product/service is, or would be, sold, delivered or provided to customers/clients that are outside of the metropolitan statistical area if the project would be located in a community that is within a metropolitan statistical area, or outside of the county, if the project would be located in a community that is not part of a metropolitan statistical area. A regionally significant project would not be eligible for a business that is the retail or service operations of such enterprise or that is otherwise captive to the local market. Other projects may be considered by the empire zone designation board.

(v) Clean energy research and development enterprise means any electric generating facility that used pulverized coal technology, circulating fluidized bed technology or integrated gasification combined cycle technology and that is capable of capturing carbon dioxide for sequestration or capable of being retrofitted to capture carbon dioxide for sequestration.

(w) Qualified investment project means a project (i) located within an empire zone, (ii) at which five hundred or more jobs will be created, provided such jobs are new to the state and are in addition to any other jobs previously created by the owner of such project in the state, and (iii) which will consist of tangible personal

property and other tangible property, including buildings and structural components of buildings, described in subparagraphs (i), (ii), (iii), (iv) and clause (A) or (C) of subparagraph (v) of paragraph (b) of subdivision twelve-B of section two hundred ten of the Tax Law, the basis of which for federal income tax purposes will equal or exceed seven hundred fifty million dollars. Provided however, the owner of such project does not employ more than two hundred persons in the state at the time such project is commenced.

(x) Significant capital investment project means a project (i) located within an empire zone, (ii) which will be either a newly constructed facility or a newly constructed addition to or expansion of a qualified investment project, consisting of tangible personal property and other tangible property, including buildings and structural components of buildings, described in subparagraphs (i), (ii), (iii), (iv) and clause (A) or (C) of subparagraph (v) of paragraph (b) of subdivision twelve-B of section two hundred ten of the Tax Law, the basis of which for federal income tax purposes will equal or exceed seven hundred fifty million dollars, (iii) which is constructed after the basis for federal income tax purposes of the property comprising such qualified investment project equals or exceeds seven hundred fifty million dollars, and (iv) at which five hundred or more jobs will be created, provided such jobs are new to the state and are in addition to any other jobs previously created by the owner of such project in the state.

(y) Change of ownership shall include a reformation, reorganization or acquisition of the certified business enterprise where an owner of that enterprise, or a related person or an affiliate of that enterprise, does not retain, directly or indirectly, any percent of the ownership interest or control of the enterprise formed as a result of the reformation, reorganization or acquisition.

(z) Zone development plan means a plan submitted for approval to the Commissioner by the local empire zone administrative board and shall demonstrate the methods by which the applicant intends to promote the development of new business and the expansion of existing business within the empire zone. Elements of the plan shall include, but not be limited to, the following:

(1) a statement indicating how empire zone designation would assist in the revitalization of the area in which such zone is proposed to be located;

(2) a description of the method by which industrial development agencies or other public finance agencies shall grant a preference for allocation of private activity bonding authority for projects located in the proposed empire zone;

(3) a description of proposals for infrastructure improvements and investments and a timetable for their completion;

(4) a statement identifying those local tax incentives proposed to be offered within the zone;

(5) a description of a procedure to expedite the issuance of any required local permits or licenses;

(6) a description of other activities to be undertaken by municipal agencies, business entities, not-for-profit corporations, community-based organizations or any other persons, which are designed to promote private sector business investment and job development in the empire zone, and a description of the job training or job placement services to be made available to empire zone residents in need of such training or services and a description of the process for listing all new jobs through the appropriate Department of Labor division then providing employment services;

(7) an inventory of real property located within the proposed empire zone that is owned by a municipality or the State and is currently unused by the municipality or the State;

(8) a description of the business development programs and services to be available to stimulate the creation of new small businesses, including new small minority and women business enterprises;

(9) a description of efforts that will be undertaken to prevent or discourage the displacement of residents of the proposed empire zone and a description of provisions to identify and serve the needs of displaced workers;

(10) a description of activities designed to ensure the meaningful participation of minority and women business enterprises in empire zone development activities;

(11) a description of provisions for the participation of not-for-profit and business corporations in the development of the plan and in strategies for implementation of the plan;

(12) a description of the marketing strategy to be employed by the applicant to promote business development in the zone and the resources to be committed by the applicant and other organizations to the implementation of such strategy;

(13) a description of the method by which the applicant will evaluate the success of any activities to be undertaken in the proposed empire zone; provided, however, that the applicant shall take into consideration the factors upon which the selection of the area was based in any evaluation;

(14) a description of provisions for participation in and allocation of funds by the affected local workforce investment board and administrative entity established pursuant to the Workforce Investment Act of 1998 (P.L. 105-220, 29 U.S.C. 2801 et seq., as amended) to provide workforce development and job training in the zone;

(15) a statement of the reasons why the particular geographic configuration of the zone was selected;

(16) a description of the structure and duties of the local zone administrative board to be established within each empire zone;

(17) a description of the special programs to be operated by educational institutions and other training entities in the area to prepare and train zone residents for employment by businesses located within and outside the zone including five-year job creation targets, goals for community hires residing within or near the zone, and goals for targeted hires;

(18) a statement from the appropriate regional development council setting forth the specific resources to be allocated for business development in the zone;

(19) a description of facilities for licensed and certified child day care for the children of persons engaged in training for employment in, or employed in, the zone;

(20) a description of specific strategies and priorities for economic revitalization of the zone and of indicators to be used to measure performance against objectives;

(21) a statement of human resource development goals for the [economic development zone] empire zone and specific strategies for achieving them;

(22) a description of how the applicant will use zone designation to coordinate economic development programs and providers at the local level to service the zone;

(23) a description of the organizational actions to be taken by the local [economic development zone] empire zone administrative board and zone administrative entities to implement specified business, community and human resource development goals and strategies;

(24) a description of the financial commitments which the applicant is prepared to make to the zone, including, but not limited to, specific commitments for infrastructure improvements;

(25) a description of how the local economic development entities, as described in section 961(b)(xii) of the General Municipal Law will integrate its services to allow for the best possible economic development support for the zone; and

(26) a description of specific strategies and actions taken by the local empire zone administration board and zone administrative entities to integrate economic goals with the objectives of community well-being and environmental protection, such as open space protection, that will promote new development patterns in order to take advantage of resources and opportunities, such as existing public sewer and water infrastructure, without compromising the needs of future generations.

(aa) Benefit-to-cost ratio means the calculation of the estimated value of (i) all wages and benefits, projected to be paid by a business enterprise to all existing and projected employees of the business enterprise in the zone, plus (ii) all capital investments projected to be made by the business enterprise in the zone, divided by the estimated amount of total empire zone tax benefits that may be used and may be refunded.

(bb) Capital investments means investments in tangible personal property or other tangible property which is depreciable pursuant to section 179 (d) of the United States Internal Revenue Code. Capital investments do not include operating expenses such as office supplies, utilities, rent, and other recurring expenses.

(cc) Single business enterprise means two or more related business enterprises characterized by an absence of arms length relationships found among enterprises that are not integrated. Factors to be considered, among other things, in determining the existence of a single business enterprise are interrelation of operations, common management, centralized control of labor relations, common ownership and common financial control.

10.3 Authorized applicants.

(a) [Applications for economic development zone designation may be submitted by any eligible municipality. An application may be submitted by a county, city, town or village for a zone within it.] Applications for empire zone designations may be submitted by a city, county (other than a county located wholly within a city), town or village or a zone within it that satisfies the requirements of Article 18-B of the General Municipal Law and these regulations. A city, county (other than a county located with a city), town or village must adopt a local law authorizing such municipal corporation to prepare and submit an application to the Commissioner for designation of an area therein as an empire zone. The adoption of such local law shall occur prior to the submission of an application for such designation, and shall describe the boundaries of such area in a manner and form prescribed by the department.

(b) Applications, described in section 10.8 of this Part, must:

(1) be signed by the chief executive officer of the county, city, town or village making the application, or by [his] such chief executive officer's designee, and must be received by the Commissioner on or before the date announced by the Commissioner for each round;

(2) include a statement signed by the [head of that municipality's legislative body,] chief executive, or by such chief executive's designee that the information contained in such application, to the maximum extent possible, is accurate and complete;

(3) if submitted by a city, town or village for a zone located wholly or partly within [a village] another municipality, include a copy of a local law or resolution by the governing body of [the village] such municipality, except for the county, concurring in the application; and

(4) if submitted by a county, include a copy of a local law or resolution by the governing body of each city, town or village in which the zone is to be located, concurring in the application.

10.4 Eligibility.

(a) To be eligible to compete for designation as an [economic development zone] empire zone, an area or each constituent part thereof must be characterized by pervasive poverty, high unemployment and general economic distress; correspond to traditional neighborhood or community boundaries and, where appropriate, be bounded by major natural or man-made physical boundaries, such as bodies of water, railroad lines, or limited-access highways; must meet the requirements set forth in subdivision (b), [(c)](d), [(d)] (f) or [(e)] (h) of this section pursuant to the most recent census data available, where applicable, or, in lieu of census data, pursuant to other data deemed reliable by the Commissioner, and meet the zoning and land availability criteria set forth in subdivisions [(f)] (j) and [(g)] (k) of this section. Zones designated pursuant to subdivisions (b) and (h) herein shall be known as "investment zones" and zones designated pursuant to subdivisions (d) and (f) herein shall be known as "development zones."

(b) An area shall be eligible for designation if it includes a United States census tract or tracts or block-numbering area or areas, or portions thereof, each full census tract or portion of a block-numbering area of which, according to the most recent census data available, has:

(1) a poverty rate of at least 20 percent for the year to which the data relate;

(2) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relate; and

(3) a population of at least 2,000.

(c) Each zone designated under section 10.4(b) of this Part must be wholly contained within up to three distinct and separate contiguous areas; provided, however, that empire zones designated prior to April 1, 2005 shall identify such distinct and separate contiguous areas, which shall equal up to their total allotted acreage at the time of designation, by January 1, 2006. Provided further, however, that notwithstanding the provisions of paragraphs (1)-(3) of section 10.4(b) of this Part, section 10.5 of this Part and section 957(d) of the General Municipal Law, a regionally significant project may be located outside of the investment zone's distinct and separate contiguous areas but within the zone applicant's municipal boundaries. Provided further, however, if the investment zone is located in a county that does not have a development zone such regionally significant project may be located within the county's boundaries.

[c](d) Any county may apply for designation of an area within a municipality as an [economic development zone] empire zone if:

(1) the average rate of unemployment in the county in the two most recent calendar years was at least 1.25 times the State average for those years;

(2) the rate of poverty in the county for individuals was 13 percent according to the most recent census data available; and

(3) the county does not contain a census tract or tracts, portion of a block-numbering area, or a city, town or village which, according to the most recent census data available, has:

(i) a poverty rate of at least 20 percent for the year to which the data relate;

(ii) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relate; and

(iii) a population of at least 2,000.

(e) each zone designated under section 10.4(d) of this Part must be wholly contained within up to six distinct and separate contiguous areas; or, in the case of a zone located in more than one county, up to twelve distinct and separate contiguous areas; provided, however, that empire zones designated prior to April 1, 2005 shall identify such distinct and separate contiguous areas, which shall equal up to their total allotted acreage at the time of designation, by January 1, 2006. A zone created pursuant to this subdivision shall apply to have up to three separate and distinct contiguous areas designated as investment zones under subdivisions (b) and (h) herein; provided that

(1) 75% of the acreage used to define the boundaries of a distinct and separate contiguous area as an investment zone must be in either an eligible or contiguous census tract; and

(2) If the applicant county already contains an applicant municipality with its own empire zone, and the eligible census tracts in the county are located exclusively within the boundaries of the applicant municipality, then the applicant county is not required to locate the investment zones within the boundaries of the applicant municipality;

[d](f) Notwithstanding the provisions of subdivision (b) or ([c]d) of this section, any county may apply for designation of an area within a municipality as an [economic development zone] empire zone provided that the following requirements are met:

(1) at the time of application, the unemployment rate of the metropolitan statistical area must exceed the national average of unemployment and the metropolitan statistical area must have experienced or is likely to experience within three years the lesser of a loss of 4,000 direct jobs or a dislocation of workers equal to one-half percent of the employed population of the metropolitan statistical area and at least 50 percent of the job loss

or dislocation of workers must result from the action of a single employer, or 80 percent of such job loss or dislocation must occur in a single North American [standard i] Industry [c] Classification (two digit code); or

(2) at the time of application, the unemployment rate of the metropolitan statistical area must be equal to or less than the national average of unemployment and the metropolitan statistical area must have experienced or is likely to experience within three years the lesser of a loss of 8,000 direct jobs or a dislocation of workers equal to one percent of the employed population of the metropolitan statistical area and at least 50 percent of the job loss or dislocation of workers must result from the action of a single employer, or 80 percent of such job loss or dislocation must occur in a single North American [standard i] Industry [c] Classification (two-digit code); or

(3) at the time of application, the unemployment rate of the labor market area must exceed the national average of unemployment and the labor market area must have experienced or is likely to experience within three years the lesser of a loss of 500 direct jobs or a dislocation of workers equal to two percent of the employed population of the labor market area; or

(4) at the time of application, the unemployment rate of the labor market area must be equal to or less than the national average of unemployment and the labor market area must have experienced or is likely to experience within three years the lesser of a loss of 1,000 direct jobs or a dislocation of workers equal to four percent of the employed population of the labor market area; or

(5) at the time of application, the municipality is declared a natural disaster area by the President of the United States; or

(6) at the time of application, the municipality contains:

(i) a defense or military base or facility which has been designated for closure or realignment; or

(ii) a State-operated hospital or facility listed in sections 7.17 or 13.17 of the Mental Hygiene Law which has been designated by either the Commissioner of Mental Health or the Commissioner of Mental Retardation and Developmental Disabilities for contraction or discontinuance within two years from the date of the official

announcement of the solicitation of applications for zone designation; Provided, however, that no more than one-third of the zones designated shall be based on applications filed pursuant to paragraph (6) of this subdivision.

(g) Each zone designated under section 10.4(f) of this Part must be wholly contained within up to six distinct and separate contiguous areas; or, in the case of a zone located more than one county, up to twelve distinct and separate contiguous areas; provided, however, that empire zones designated prior to April 1, 2005 shall identify such distinct and separate contiguous areas, which shall equal up to their total allotted acreage at the time of designation, by January 1, 2006. A zone created pursuant to this subdivision shall apply to have up to three separate and distinct contiguous areas designated as investment zones under subdivisions (b) and (h) herein; provided that:

(i) 75% of the acreage used to define the boundaries of a distinct and separate contiguous area as an investment zone must be in either an eligible or contiguous census tract; and

(ii) If the applicant county already contains an applicant municipality with its own empire zone, and the eligible census tracts in the county are located exclusively within the boundaries of the applicant municipality, then the applicant county is not required to locate the investment zones within the boundaries of the applicant municipality;

[e](h) An area shall be eligible for designation if it includes a United States census tract or tracts or block numbering area or areas or portions thereof, each full census tract or portion of a block numbering area of which according to the most recent census data available has:

(1) at the time of application, an unemployment rate equal to or exceeding the unemployment rate of the state of New York;

(2) a rate of poverty for individuals of at least 20 percent;

(3) a number of households receiving public assistance of 14 percent or more;

(4) the municipality is considered a non-metropolitan area; and

(5) there is no other [economic development zone] empire zone in the county in which designation is sought.

(i) Each zone designated under section 10.4(h) of this Part must be wholly contained within up to three distinct and separate contiguous areas; provided, however, that empire zones designated prior to April 1, 2005 shall identify the three distinct and separate contiguous areas, which shall equal up to their total allotted acreage at the time of designation by January 1, 2006; provided, however, the existing zone must include as much designated acreage into the distinct and separate contiguous areas as possible. Provided further, however, that notwithstanding the provisions of paragraphs (1)-(5) of section 10.4(h) of this Part, section 10.5 of this Part and section 957(d) of the General Municipal Law, a regionally significant project may be located outside of the investment zone's distinct and separate contiguous areas but within the boundaries of the applicant municipality. Provided further, however, if the investment zone is located in a county that does not have a development zone such significant project must be located within the county's boundaries.

[f](j) If an area for which application is made is governed by zoning laws or other laws or regulations governing land use, such laws or regulations must allow at least 25 percent of such areas to be used for commercial or industrial activity.

[g](k) At least 25 percent of the total land within the proposed zone must be vacant, abandoned or otherwise available for industrial or commercial development.

(l) Any zone designated pursuant to subdivisions (b), (d), (f), and (h) of section 10.4 of this Part may apply to the Commissioner to add one additional distinct and separate contiguous area, upon demonstration that the distinct and separate contiguous areas created pursuant to subdivisions (c), (e), (g) and (i) of this section 10.4:

(1) lack sufficient existing infrastructure to accommodate business development and, there are other areas of the applicant municipality that can be characterized by pervasive poverty, high unemployment, and general

economic distress, are in need of economic revitalization, and could benefit from designation as an empire zone;

or

(2) such additional area is necessary for a project and constructing the project in the three or six proposed distinct and separate contiguous areas, as the case may be, would be inconsistent with open space conservation and wetland protection; or

(3) lack sufficient acreage for further economic development.

Provided, however, such additional distinct and separate contiguous area shall not result in an empire zone that exceeds 1,280 acres.

(m) Any certified business located outside of an empire zone's distinct and separate contiguous areas, pursuant to this section, shall be allowed the empire zone benefits until they are decertified. Such status shall apply to an expansion of the certified business within the parcel or portion thereof that was originally located in the zone before redesignation. Each zone must identify any such business by December 30, 2005.

(n) The boundaries that comprise the distinct and separate contiguous areas must include at least the real property on one side of a public thoroughfare when such street is used as a boundary. No boundary shall be constructed as to connect one tax parcel to another tax parcel by using a thoroughfare's center line, sidewalk or other similar means of connecting a non-contiguous area to the zone's distinct and separate contiguous areas.

10.5 Nearby or contiguous lands.

(a) Lands nearby or contiguous to areas described in section 10.4(b) and [(e)] (h) of this Part may be eligible to be included within an [economic development zone] empire zone if, upon the request of the applicant for such designation, the Commissioner finds that such additional lands have significant potential for business development and job creation which will enhance economic revitalization of the zone and benefit zone

residents. This request shall be included in the original application for designation of an area as an [economic development zone] empire zone for an existing zone[,] or in a request for a boundary revision.

(b) Factors to be considered by the Commissioner in determining whether such additional lands have significant potential for business development and job creation are:

- (1) existing infrastructure, such as water, sewers and roadways;
- (2) lands and/or buildings immediately available for development;
- (3) access to public transportation;
- (4) labor force available in the immediate area;
- (5) nearby training facilities; and
- (6) existing business base capable of expansion.

(c) Notwithstanding subdivision (b) of this section, lands nearby may only be included if applicant demonstrates that:

- (1) such lands and/or buildings are vacant, abandoned, or otherwise available for commercial or industrial purposes, except when it can be demonstrated that inclusion in the zone of certain occupied buildings will result in a significant business investment and/or increase in employment;
- (2) other available lands do not have the potential for timely development at a reasonable cost;
- (3) these lands are necessary to meet the 25 percent minimum for developable lands within a zone; and
- [(4) these lands do not constitute more than 320 acres of the zone,]
- [5](4) that new jobs likely to be created are accessible to residents of the zone.

10.6 Size and boundaries.

(a) Except as provided in section 10.6(c) of this Part below, [An]an area for which designation as an [economic development zone] empire zone is sought shall not exceed two square miles for any proposed or

existing zone. Such area shall be defined by one or more borders determined by the applicant, which need not be entirely coterminous with the borders of census tracts or block-numbering areas. Each zone shall be located entirely within traditional neighborhood or community boundaries and, where appropriate, be bounded by major natural or man-made physical boundaries, such as bodies of water, railroad lines, or limited-access highways.

(b) An area for which designation as an [economic development zone] empire zone is sought shall not exceed two square miles for any zone within a town with a population of less than 25,000, provided that such zone is not wholly within a village. Such area shall be defined by a continuous border, which shall be determined by the applicant, and which need not be entirely coterminous with the borders of census tracts or block-number areas.

(c) Any zone lands designated for regionally significant projects as defined in section 10.2(u) of this Part herein shall not be included within the two square mile limitation.

10.7 Competition criteria.

The following factors may be considered by the Commissioner in determining which of the competing [eligible areas] applications [to] he or she shall recommend to the [economic development zone] empire zones designation board:

(a) [a comprehensive] demonstration of chronic and severe economic distress and the reasons therefore as evidenced by population and employment decline, increase in unemployment and public assistance recipients, decline in real property values, relative decline in per capita income, the extent of abandoned property and deteriorated industrial, commercial and residential properties, a decline in the number of business establishments, obsolescence in plant capacity, loss of markets to foreign competition, the unavailability of expansion financing, poor access to markets, the retirement of local owners of companies;

(b) a demonstration of the potential of the area to attract private investment that will provide employment to persons in the area who are unemployed or economically disadvantaged;

(c) a demonstration of substantial public and private commitments to a long-term economic revitalization program for the area and the local capacity to manage such a program;

(d) a demonstration of the manner in which the overall economic development plan enunciates the needs of the area and sets forth proposals to meet them;

(e) a demonstration of the manner in which progress in implementing the zone development plan will be routinely evaluated on the local level and how information essential for periodic evaluations will be compiled;

(f) the extent to which the applicant has made financial commitments for zone activities, including but not limited to, marketing of the zone for business development, human resource services for zone residents and businesses, and services for small and minority and women-owned businesses; and

(g) the likelihood that any publicly controlled or other developable lands and buildings within the proposed zone will be made available for industrial and commercial development.

10.8 Applications.

No application for designation of an area as an [economic development zone] empire zone shall be accepted unless the applicant demonstrates that it has, to the maximum extent feasible, solicited and considered the views of residents of the proposed zone, the views of State and local officials elected to represent such residents, and the local private organizations representing such residents. The [local legislative body] chief executive officer shall ensure that the information contained in the application, to the maximum extent possible, is accurate and complete. The application shall be signed and submitted by the chief executive officer of the county, city, town or village making the application, or by [his] such chief executive officer's designee, by the date determined by the Commissioner for each round, and shall include, but not be limited to, the following:

(a) a copy of a local law authorizing the city, county (other than a county located wholly within a city), town or village to prepare and submit an application to the Commissioner for designation of an area therein as an [economic development zone] empire zone. Such local law shall also designate the boundaries of such area, the title of the official who shall serve as the local [economic development zone] empire zone administrator and the generic composition of the local [economic development zone] empire zone administrative board, whose chairman shall be an officer or employee of the applicant;

(b) a description of the physical characteristics of the proposed [economic development zone] empire zone area, infrastructure, existing business base, housing conditions, training, education and human resource needs, characteristics of the labor force and occupational trends in the area, and economic problems faced by businesses and residents within the proposed zone;

(c) a copy of the [economic development zone] zone development plan. The zone development plan shall be resubmitted by the local zone administrative board as economic conditions change within the zone, or when other factors trigger a need for a change in the zone development plan as determined by the local zone administrative board; provided however, changes in a zone development plan must be approved by the Commissioner [demonstrating the methods by which the applicant intends to promote the development of new businesses and the expansion of existing businesses within the economic development zone];

[, including but not limited to:

(1) a statement indicating how economic development zone designation would assist in the revitalization of the area in which such zone is proposed to be located;

(2) a description of the method by which industrial development agencies or other public finance agencies shall grant a preference for allocation of private activity bonding authority for projects located in the proposed economic development zone;

(3) a description of proposals for infrastructure improvements and investments and a timetable for their completion;

(4) a statement identifying those local tax incentives proposed to be offered within the zone;

(5) a description of a procedure to expedite the issuance of any required local permits or licenses;

(6) a description of other activities to be undertaken by municipal agencies, business entities, not-for-profit corporations, community-based organizations or any other persons, which are designed to promote private sector business investment and job development in the economic development zone, and a description of the job training or job placement services to be made available to economic development zone residents in need of such training or services;

(7) an inventory of real property located within the proposed economic development zone that is owned by a municipality or the State and is currently unused by the municipality or the State;

(8) a description of the business development programs and services to be available to stimulate the creation of new small businesses, including new small minority and women business enterprises;

(9) a description of efforts that will be undertaken to prevent or discourage the displacement of residents of the proposed economic development zone;

(10) a description of activities designed to ensure the meaningful participation of minority and women business enterprises in economic development zone development activities;

(11) a description of provisions for the participation of not-for-profit and business corporations in the development of the plan and in strategies for implementation of the plan;

(12) a description of the marketing strategy to be employed by the applicant to promote business development in the zone and the resources to be committed by the applicant and other organizations to the implementation of such strategy;

(13) a description of the method by which the applicant will evaluate the success of any activities to be undertaken in the proposed economic development zone; provided, however, that the applicant shall take into consideration the factors upon which the selection of the area was based in any evaluation;

(14) a description of provisions for participation in and allocation of funds by the affected service delivery area private industry council and administrative entity established pursuant to the Job Training Partnership Act (P.L. 97-300) to provide job training in the zone;

(15) a statement of the reasons why the particular geographic configuration of the zone was selected;

(16) a description of the structure and duties of the local zone administrative board to be established within each economic development zone;

(17) a description of the special programs to be operated by educational institutions and other training entities in the area to prepare and train zone residents for employment by businesses located within and outside the zone;

(18) a statement from the appropriate regional development council setting forth the specific resources to be allocated for business development in the zone;

(19) a description of facilities for licensed and certified child day care for the children of persons engaged in training for employment in, or employed in, the zone;

(20) a description of specific strategies and priorities for economic revitalization of the zone and of indicators to be used to measure performance against objectives;

(21) a statement of human resource development goals for the economic development zone and specific strategies for achieving them;

(22) a description of how the applicant will use zone designation to coordinate economic development programs and providers at the local level to service the zone;

(23) a description of the organizational actions to be taken by the local economic development zone administrative board and zone administrative entities to implement specified business, community and human resource development goals and strategies; and

(24) a description of the financial commitments which the applicant is prepared to make to the zone, including, but not limited to, specific commitments for infrastructure improvements;]

(d) a copy of the local law or resolution adopting such [economic development zone] empire zone development plan by the local governing body of the area in which the economic development zone is to be located, with such local law or resolution identifying the composition of the local empire zone administrative board;

(e) any maps, as indicated on the application form, of the area comprising the proposed [economic development zone] empire zone, showing existing streets, highways, waterways, natural boundaries and other physical features;

(f) a statement from the [private industry council of the service delivery area established by the Job Training Partnership Act (P.L. 97-300)] workforce investment board, established by the Workforce Investment Act of 1998 (P.L. 105-220, 29 U.S.C. 2801 et seq., as amended) that encompasses the proposed [economic development zone] empire zone, setting forth the assistance to be provided and the resources to be allocated for the training of residents in the area and the operation of a workforce development and job training program;

(g) a statement from the industrial development authority serving the municipality in which the zone is located, and from any other development finance entity supported by public money, setting forth the assistance to be provided and the resources to be allocated to business development activities in the zone;

(h) the statement and any local law or [ordinance] resolution specified in section 10.3 of this Part;

(i) a statement of the goals and objectives, both short term and long term, for the economic revitalization of the proposed zone;

(j) a description of plans and strategies for providing and improving human resource development services to residents of the area comprising the proposed zone and to employees of businesses within such area, and the methods by which performance in implementing such plans and strategies will be evaluated;

(k) identification of financial commitments the applicant will make to the zone for activities, including but not limited to, marketing of the zone for business development, human resource services for zone residents and businesses, and services for small and minority and women-owned businesses; [and]

(l) identification of publicly controlled and other developable lands and buildings within the proposed zone which are or could be made available for industrial and commercial development[.];

(m) a statement from the applicant and local economic development entities, including but not limited to the local development corporation, local development councils, authorities, agencies, and all other such entities concerned with the economic development of the municipality, ensuring the complete integration and cooperation of resources and services for the purposes of providing essential support for the zone administrator in order for the zone to realize such goals; and

(n) a statement demonstrating that there is no viable alternative area available that has existing public sewer or water infrastructure other than the proposed empire zone.

10.9 Commissioner's review of applications; recommendation.

(a) The Commissioner shall review and analyze each application and make recommendations to the [economic development zone] empire zones designation board for designation of areas as [economic development zone] empire zones. An applicant which is not recommended by the Commissioner to the [economic development zone] empire zones designation board may reapply to the Commissioner in a subsequent round of competition.

(b) By January 1, 2006, each existing empire zone must identify to the empire zones designation board its distinct and separate contiguous areas. The empire zones designation board shall approve the initial distinct and separate contiguous areas so identified. Provided, however, such approval shall be by unanimous vote.

10.10 Boundary Revisions.

(a) The applicant municipality of an empire zone may, by resolution, submit to the Commissioner a request to revise the boundaries of such empire zone. The Commissioner may approve such revision subject to the following provisions:

(1) the Commissioner must determine that a change in circumstances has occurred since the establishment of the existing borders which makes revision of such borders necessary or desirable; and

(2) the Commissioner shall affirm that such revision would not have the effect of producing an empire zone which does not satisfy the criteria for empire zone designation established by sections 10.3(a), 10.3(b)(3) and (4), 10.4, 10.5 and 10.6 of this Part; and

(3) the Commissioner may grant approval of revisions of the borders of an empire zone after prior public notice and a public hearing if such revision adds territory to an existing empire zone; and

(4) the Commissioner may grant approval of a revision of the borders of an empire zone after public notice of such proposed revision and a public hearing at least thirty days prior to the effective date of such revision, if such revision removes territory from an existing empire zone.

(b) The effective date of a boundary revision shall be the later of: the date a local law was adopted by the applicant municipality revising the description of the borders of an empire zone; the date the last resolution or law was adopted by a concurring municipality agreeing to the revision proposed by the applicant municipality; or 30 days after a public hearing for revisions that add or remove zone acreage;

(c) It is the policy to allow each zone no more than one boundary revision within a twelve month period. If, however, there is a change involving extenuating factors within the twelve-month period, such as the attraction/retention of a regionally significant project as defined in section 10.2(u) of this Part, which is consistent with the applicable zone's zone development plan, the request will be considered.

(d) Any request to revise the boundaries of an existing empire zone that would add or remove acreage from a zone shall not be submitted until the provisions of this subdivision are satisfied and the designation of the distinct and separate contiguous areas are submitted as required by section 957 of the General Municipal Law, unless the zone administrative board demonstrates that prior to April 1, 2005 it has been working in conjunction with a business for the purpose of submitting such boundary revision that would result in the creation of jobs within the zone. For purposes of section one hundred eight-seven-j and articles nine-A, twenty-two, thirty-two and thirty-three of the tax law, such business shall be deemed to have been certified prior to April 1, 2005.

(e) Notwithstanding the provisions of this section, for any empire zone acreage designated as a result of a revision of the borders of an empire zone prior to April 1, 2005 that is outside of the distinct and separate contiguous areas that has not demonstrated any appreciable commercial activity and/or any appreciable capital improvement over a two year period from the time of designation, such acreage shall be identified by the local empire zone administrative board, which shall determine whether such acreage has been proposed for development in a manner consistent with the applicable zone's zone development plan. If such acreage has not been proposed for development in such manner the local empire zone administrative board shall remove such acreage from the zone. Any affected business or businesses shall be immediately decertified.

PART 11

[JOINT] CERTIFICATION OF BUSINESS ENTERPRISES

11.1 Purpose and general description.

(a) The purpose of this Part is to set forth the application process for [joint] certification of business enterprises as eligible for benefits pursuant to article 18-B of the General Municipal Law.

(b) A business enterprise which operates a facility in an [economic development zone] empire zone and which is certified pursuant to this Part may be eligible for one or more of the following benefits, providing all applicable statutory criteria have been satisfied:

(1) a reduction in utility costs, assessed prior to 1994, of certain businesses other than those primarily engaged in the retail sale of tangible personal property, pursuant to section 186-a.8 of the Tax Law;

(2) an investment tax credit against the [corporate] franchise tax on business corporations pursuant to section 210.12-B and an employment incentive credit pursuant to section 210.12-C of the Tax Law;

(3) an investment tax credit against the personal income tax pursuant to sections 606(i) and 606(j) of the Tax Law, and an empire zone employment incentive credit pursuant to sections 606(i) and 606 (j-l) of the Tax Law;

(4) an empire zone [wages] wage tax credit against the [corporate] franchise tax on business corporations, the personal income tax, the franchise tax on banking corporations [tax] and the franchise tax on insurance [corporation] corporations [tax] pursuant to sections 210.19, 606(i), 606(k), 1456(e) and 1511(g), respectively, of the Tax Law; [and]

(5) an empire zone real property tax credit against the franchise tax on agricultural cooperatives pursuant to section 187-j of the Tax Law, an empire zone investment tax credit against the franchise tax on agricultural pursuant to section 187-k of the Tax Law, the empire zone employment incentive credit against the franchise tax on agricultural cooperatives pursuant to section 187-l of the Tax Law, and the empire zone wage tax credit against the franchise tax on agricultural cooperatives pursuant to section 198-m of the Tax Law.

[5](6) a special [economic development zone] empire zone rate for gas or electric service equal to the incremental cost of providing such service pursuant to section 66(12-c) of the Public Service Law. Such

[economic development zone] empire zone rates may remain available to certified business enterprises for a period of up to 10 years following initial certification, unless such certification is revoked, notwithstanding the expiration of the designation of an [economic development zone] empire zone;

(7) a qualified empire zone enterprise credit for real property taxes pursuant to sections 14, 15, 210(27), 187(j), 606(bb), 606(i), 1456(o), and 1511(r) of the Tax Law;

(8) a qualified empire zone enterprise tax reduction credit pursuant to sections 14, 15, 210(28), 606(i), 606(cc), 1456(p) and 1511(s) of the Tax Law; and

(9) a qualified empire zone enterprise sales and use tax exemption pursuant to sections 14 and 1115(z) of the Tax Law.

(c) Certain benefits may be available in [economic development zone] empire zones without obtaining certification pursuant to this Part, including:

(1) a real property tax exemption pursuant to section 485-e of the Real Property Tax Law;

(2) a tax credit for qualified investments in or contributions to [economic development zone] empire zone capital corporations, qualified investments in certified zone businesses and contributions to community development projects pursuant to sections 210.20, 606(i), 606(1), 1456(d) and 1511(h) of the Tax Law; and

(3) a refund or credit of State and local sales taxes for certain purchases pursuant to sections 1119(a) and 1210 of the Tax Law.

11.2 Authorized applicants

A business enterprise which owns or operates a facility in an [economic development zone] empire zone, or which plans to do so, may apply for [joint] certification pursuant to this Part.

11.3 Contents of application

Application for certification of a business enterprise shall be made on a form prescribed by the Commissioner [of Economic Development], which [shall] may include, but not be limited to:

(a) Identification of applicant:

- (1) name and form of business organization of applicant;
- (2) taxpayer identification number;
- (3) New York State unemployment insurance registration number; and
- (4) names of parent, subsidiary and affiliated business organizations, if any.

(b) Description of existing business, including:

- (1) list of addresses of each facility in New York State;
- (2) list of goods and services produced at each facility in New York State;
- (3) number of employees at each facility in New York State as of the March 31st, June 30th, September 30th or December 31st preceding the date of the application, whichever is latest; and
- (4) names of the workers' compensation and disability benefits insurance carriers and policy numbers for each existing facility in New York State.

(c) Information and certification regarding compliance with laws for the protection of workers, including:

- (1) all determinations by administrative agencies or courts that the applicant or any of its officers or directors violated any Federal or State law for the protection of workers within the preceding three years, including laws regulating labor standards, discrimination in employment, provision of workers' compensation or disability insurance, unemployment insurance tax liability and occupational safety and health;

(2) description of any denial of services to the applicant by the New York State Department of Labor's [Job] Employment Service within the preceding three years; and

(3) a certification by the applicant that it is not currently and, other than as indicated in the application, has not for the preceding three years, been found by an administrative agency or court to be in violation of any Federal or State law for the protection of workers.

(d) Description of business to be conducted in facility located in or planned for the [economic development zone] empire zone, including:

(1) identification of owner;

(2) identification of operator;

(3) location of facility;

(4) list of goods and services to be produced;

(5) four-digit [standard] North American industrial classification code of business of zone facility, if code is known;

(6) total annual sales projected for zone facility;

(7) total annual retail sales of tangible personal property projected for zone facility;

(8) whether the business has previously applied for certification and been denied; and

(9) whether the business has previously received a certification which has been revoked.

(e) Description of investment to be made in the facility, including:

(1) any construction, rehabilitation or renovation;

(2) purchase or lease of equipment;

(3) estimated total cost of investment; and

(4) estimated schedule for start of any construction, rehabilitation or renovation of the facility and for completion.

(f) Existing and projected additional employment at facility, including:

(1) number of existing full-time employees and number of existing part-time employees; and

(2) projected number of additional full-time and part-time positions to be created within 12 months and within 24 months as a result of investment in the zone, for positions in which a substantial part of the work will be performed in the zone, listed by occupation, including starting wages and promotional opportunities.

(g) To be eligible for certification, a business enterprise must agree, in its application for certification, to:

(1) list, for purposes of recruitment, all openings for jobs and training programs in the [economic development zone] empire zone, exclusive of general executive officers, with the local job service office of the New York State Department of Labor or demonstrate to the satisfaction of the Commissioner [of Economic Development] and the Commissioner of Labor what other comparable methods will be used to recruit targeted individuals for such openings. For the purposes of this Part, the term targeted individual shall mean a New York resident who is (i) an eligible individual under the provisions of the [targeted jobs] work opportunity tax credit (Internal Revenue Code section 51, as added by P.L. 95-30 and subsequently amended), (ii) eligible for benefits under the provisions of the [job training partnership] workforce investment act (29 U.S.C. section [1501] 2801 et seq., as added by P.L. [97-300] 105-220 and subsequently amended) as a dislocated worker or low-income individual, (iii) a recipient of public assistance benefits, [or] (iv) an individual whose income is below the most recently established poverty rate promulgated by the United States Department of Commerce, or a member of a family whose family income is below the most recently established poverty rate promulgated by the appropriate Federal agency, or (v) an honorably discharged veteran from any branch of the armed forces;

(2) submit the information specified in section 11.7 of this Part to the local [economic development zone] empire zone administrator and the State; and

(3) not shift its operations, or some portion thereof, to an [economic development zone] empire zone from an area within New York State which has not been designated an [economic development zone] empire zone, unless the shift in operations is entirely within a municipality and has been approved by the local government body of such municipality or in situations where it has been established, after a public hearing, that

extraordinary circumstances exist which warrant the relocation of a business, in whole or part, into an empire zone from another municipality and the municipality from which the business is relocating approves of such relocation; or where such shift in operations is from a business incubator facility operated by a municipality or by a public or private not-for-profit entity which provides space and business support services to newly established firms.

(4) Authorize the Commissioner of Labor to disclose, to employees of both the New York State Departments of Labor and Economic Development, as well as the local empire zone administrative board, all records filed by the company in making Unemployment Insurance (U.I.) reports and contributions required by State Labor and Tax Law, including, but not limited to, all information contained in or relating to the quarterly combined withholding, wage reporting and U.I. returns, the registration for U.I., the New Hire file, and all records of U.I. delinquencies. In addition, this authorization shall include all information contained in any survey reports requested by the Department of Labor on behalf of the U.S. Department of Labor, Bureau of Labor Statistics including, but not limited to, the Current Employment, Occupational Employment, multiple worksite, and annual refiling surveys. The use of information and records released pursuant to this authorization shall be limited to government purposes concerning the certification of this company for Empire Zone benefits and incentives under Article 18-B of the General Municipal Law, monitoring compliance with Empire Zone program criteria, and reviewing the performance of Empire Zone programs.

(5) Certify that the business enterprise, or its agent, has disclosed all violations during the three years preceding the submission of this application for certification, involving violations of the laws regulating unemployment insurance, workers' compensation, public work, child labor, employment of minorities and women, safety and health, labor standards, or other laws for the protection of workers or Environmental Conservation , and acknowledges that a failure to disclose this information or a failure to respond to the requests to completion, or updating, of the information requested herein, may result in a denial of certification

(h) A business enterprise that applies for any tax, utility rate or management assistance benefits provided by the New York State [Economic Development Zone] Empire Zone Act shall, in its application for certification, acknowledge in writing the obligation to provide 90 days' written notice to the Commissioner [of Economic Development], the local [economic development zone] empire zone administrator, the local [economic development zone] empire zone administrative board, and the employees of the business enterprise of any intent to close or partially close a facility within the zone. Upon receiving such notice, the Commissioner [of Economic Development] shall immediately send copies thereof to the Commissioner of Labor and the director of the Job Training Partnership Council. For purposes of this subdivision, closing shall mean the permanent termination of operations of a business facility, and partial closing shall mean the permanent termination of a portion of the operations of a business facility that will immediately reduce the work force by 50 employees or more or will reduce the work force by at least 50 percent over a one-year period, whichever is greater.

11.4 Criteria and determinations for certification.

[a] The local [economic development zone] empire zone [administrator] administrative board, when evaluating certification applications of business enterprises for recommendation to the Commissioner, and the Commissioner, when determining whether to approve or disapprove those applications for certification, [the Commissioner of Labor and the Commissioner of Economic Development, when evaluating applications of business enterprises for joint certification], shall [each] consider the following criteria [and make the determinations set forth in subdivisions (b) through (d) of this section]:

[1](a) whether the business enterprise, if certified, is reasonably likely to create new employment or prevent a loss of employment in the [economic development zone] empire zone;

[2](b) whether such new employment opportunities will be for individuals who will perform a substantial part of their activities in the [economic development zone] empire zone;

[3](c) whether such business enterprise or single business enterprise, as defined in section 10.2(cc) of Part 10 of this Title, is likely to enhance the economic climate of the [economic development zone] empire zone;

[4](d) whether certification will have the undesired effect of causing individuals to transfer from existing employment with another business enterprise to similar employment with the business enterprise so certified, and transferring existing employment from one or more other municipalities in the State, or transferring existing employment from one or more other businesses in the zone. For purposes of this paragraph, a transfer of employment shall not be deemed to occur when a business relocates to an [economic development zone] empire zone from a business incubator facility operated by a municipality or by a public or private not-for profit entity which provides space and business support services to newly established firms;

(e) whether such business enterprise conforms with the zone development plan;

[5](f) whether such business enterprise or single business enterprise has made provision for empire zone recruitment for openings for jobs and training programs in the [economic development zone] empire zone;

(g) whether, as set forth in section 10.2(g) and 10.2(aa) of Part 10 of this Title, such business enterprise or single business enterprise has a benefit-to-cost ratio of at least 10:1 for manufacturing enterprises and 20:1 for all other business enterprises, the numerator of which is the sum of (i) the estimated value of all wages and benefits paid for the first three years of certification to all existing and projected employees of the business enterprise in the zone, and (ii) the estimated value of capital investments for the first three years of certification in the zone, and the denominator of which is the estimated amount of total empire zone tax benefits that may be used and may be refunded for the first three years of certification.

[6](h) the Commissioner of Labor's determination as to whether such business enterprise or single business enterprise during the three years preceding the submission of an application for certification, has engaged in a

substantial violation or a pattern of violations of laws regulating unemployment insurance, workers' compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding.

[(b) The local economic development zone administrator shall determine whether the facility is, or is planned to be, located in the economic development zone.

(c) The Commissioner of Labor shall determine:

(1) the number of existing employees in each facility of the business enterprise in New York State as of March 31st, June 30th, September 30th or December 31st preceding the date of the application, whichever is latest;

(2) the number of existing employees at the facility located in the economic development zone; and

(3) compliance of the business enterprise with applicable laws for the protection of workers.

(d) The Commissioner of Economic Development shall determine:

(1) whether the application is complete; and

(2) whether the economic development zone designation is in effect, has ended after 10 years, or has been terminated pursuant to section 969 of the General Municipal Law.]

11.5 Evaluation of application.

[(a) Applications for certification shall be submitted by the business enterprise, in triplicate, to the local economic development zone administrator. One copy of the application shall thereafter be known as the "master copy" and shall on the first page be marked "master copy" by the local economic development zone administrator.

(b) The local economic development zone administrator shall approve or disapprove the application within 10 days and so indicate by signing the master copy of the application in the space provided therefore.

(c) If the local economic development zone administrator disapproves the application, he or she shall so notify the business enterprise in writing, specifying the grounds for disapproval, and simultaneously send copies of such notification and of the application to the Commissioner of Labor and the Commissioner of Economic Development. The local economic development zone administrator shall retain the master copy of all applications which he or she disapproves.

(d) If the local economic development administrator approves the application, he or she shall deliver the master copy of the application to the Commissioner of Labor, simultaneously deliver one of the other two copies to the Commissioner of Economic Development, and retain the third copy.

(e) Within 15 days of receipt of the master copy of an application approved by the local economic development administrator, the Commissioner of Labor shall approve or disapprove the application by so indicating on the master copy of the application in the space provided therefore.

(f) If the Commissioner of Labor disapproves the application, he or she shall so notify the Commissioner of Economic Development in writing, specifying the grounds for disapproval. The Commissioner of Economic Development shall notify the local economic development administrator, who shall notify the business enterprise.

(g) If the Commissioner of Labor approves the application, he or she shall sign a statement printed on the application form authorizing the local economic development zone administrator to issue a joint certification on his or her behalf. The Commissioner of Labor shall immediately thereafter deliver the master copy of the application to the Commissioner of Economic Development.

(h) Within 10 days of receipt of the master copy of an application approved by the Commissioner of Labor, the Commissioner of Economic Development shall approve or disapprove the application by so indicating on the master copy.

(i) If the Commissioner of Economic Development disapproves the application, he or she shall, in writing, so notify the local economic development zone administrator and the Commissioner of Labor, specifying the grounds for disapproval. The local economic development zone administrator shall notify the business enterprise, specifying the grounds for disapproval.

(j) If the Commissioner of Economic Development approves the application, he or she shall sign a statement printed on the application form authorizing the local economic development zone administrator to issue a joint certification on his or her behalf. The Commissioner of Economic Development shall immediately thereafter deliver the master copy of the application to the local empire zone administrator.

(k) If the local economic development zone administrator, Commissioner of Labor and Commissioner of Economic Development all conclude that the business enterprise should be certified, the local economic development zone administrator shall issue to the applicant the certificate described in section 11.6 of this Part. The local economic development zone administrator shall simultaneously send copies to the Commissioner of Labor, Commissioner of Economic Development and Commissioner of Taxation and Finance.]

(a) Completed applications for certification shall be submitted by the business enterprise to the local empire zone administrative board.

(b) The local zone administrative board shall first determine whether the facility is, or is planned to be, located in the empire zone. If the local zone administrative board determines that the facility is, or is planned to be, located in the empire zone, the local empire zone administrative board shall make a determination to recommend or not recommend a business enterprise for certification based upon the business enterprise's completed application. If the local zone administrative board recommends a business enterprise for certification, the chair of the local empire zone administrative board shall so indicate that recommendation by signing the application in the space provided therefore and forward the completed application to the Commissioner and retain a copy. Provided, however, if the applicant is in a pending boundary revision or awaiting approval of a

regionally significant project, the chair of the local zone administrative board shall not send the application to the Commissioner prior to the official approval of such boundary revision or regionally significant project.

(c) If the completed application is recommended by the local empire zone administrative board, the Commissioner shall send the application to the Commissioner of Labor for review pursuant to section 959(a)(iii)(5) and (7) of the General Municipal Law. Upon completion of that review, the Commissioner of Labor shall notify the Commissioner whether the business enterprise, during the three years preceding the submission of an application for certification, has (i) engaged in a substantial violation or a pattern of violations of laws regulating unemployment insurance, workers compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding, further, the Commissioner of Labor shall notify the Commissioner if the business enterprise failed to disclose on its application any findings that it had violated the laws regulating unemployment insurance, workers' compensation, public work, child labor, employment of minorities and women, safety and health, labor standards, or any other laws for the protection of workers during the three years preceding the date upon which it submitted its application or (ii) been found in a criminal proceeding to have violated, in the previous three years, any of the foregoing laws or regulations promulgated pursuant to such laws, the conditions of any permit issued thereunder, or similar statute, regulation, order or permit condition of any other government agency, foreign or domestic. In the event the Commissioner of Labor determines that the business enterprise has been found in a criminal proceeding to have committed the violations referred to in clause (ii) above, the business enterprise shall not be certified.

(d) The Commissioner shall have the right to reject, in the Commissioner's sole discretion, any application that the Commissioner determines is incomplete, without making any determination to approve or disapprove the application. In the event of such rejection, the Commissioner shall return the application to the local zone administrative board that recommended the business enterprise for certification.

(e) Except for a determination by the Commissioner of Labor in accordance with the last sentence of section 11.5 (c) of this Part above, the Commissioner shall approve or disapprove an application for certification in his or her discretion after consideration of the criteria set forth in section 11.4 of this Part above. If the Commissioner approves the application, he or she shall thereafter send to the local empire zone administrators the application and a numbered certificate, as described in section 11.6 of this Part, authorizing the business enterprise to operate as a certified empire zone business. Upon receiving the application and the numbered certificate, the executed numbered certificate of empire zone certification shall be issued to the applicant.

11.6 Form of [joint] certification.

(a) The Commissioner [of Economic Development] shall develop a [joint] certificate form to be signed by the Commissioner , which [and distribute copies of such form to the local economic development zone administrators. The certificate] shall include, but not be limited to, the location of the [economic development zone] empire zone, the name of the business enterprise, the street address of the applicable facility or facilities within the zone, the date the certification is issued, the effective date of the certificate [and whether it is retroactive], and the period for which the certificate is in effect.

[, and a statement to be signed by the local economic development zone administrator that he or she has been authorized by the Commissioner of Labor and the Commissioner of Economic Development to issue such joint certification.]

(b) The effective date of certification shall be the date the chair of the local empire zone administrative board signed the application indicating that the local zone administrative board recommended the business enterprise for certification, unless, upon petition by the business enterprise the Commissioner approves as an effective date (i) the date the application for certification is approved by the Commissioner, or (ii) in the case of a business enterprise that submitted an application for a regionally significant project to the Department of

Economic Development prior to April 7, 2009 but submitted an application for certification on or after April 7, 2009, the date the Commissioner determined the project to be eligible as a regionally significant project in accordance with section 10.2 (u) of Part 10 of this Title. Such petition must be submitted to the Commissioner prior to his/her approval of the business enterprise's application for certification.

11.7 Annual report of certified businesses.

Each certified business enterprise shall annually submit a report to the local [economic development zone] empire zone [administrator] administrative board on a form to be prescribed by the Commissioner [of Economic Development]. Such report shall include but not be limited to the following: [such data as may be requested by the Commissioner of Economic Development, including but not limited to, the extent to which the certified facility has met the projections set forth in sections 11.3 and 11.4 of this Part, and, if applicable, an explanation of the reasons why not. The local economic development zone administrator shall send copies of each report to the Commissioner of Labor and the Commissioner of Economic Development.]

(a) Business certification information to include: organization name, organization address in the zone, contact information, federal employment ID number, New York state unemployment insurance number, state of formation or incorporation, and verification that the business is authorized to conduct business in the State of New York.

(b) Employment numbers calculated in the same manner in which the employment number is required to be calculated by section fourteen of the tax law including: total existing full-time equivalent jobs in the zone as of the date of certification within that zone, total existing jobs in the zone for the year in which the report is being provided, total remuneration paid to employees in the zone each quarter of the reported year, total number of employees of all zones, total annual remuneration in all zones, total annual remuneration paid in New York

state for the reported year, total employment number in New York state for the reported year as shown on each business' NYS-45 wage reporting form filed with the department of labor;

(c) Capital investment to include investments in tangible personal property or other tangible property which is depreciable pursuant to section 179 (d) of the United States Internal Revenue Code. Capital investments do not include operating expenses such as office supplies, utilities, rent, and other recurring expenses.

(d) Tax benefits used and refunded: provide an estimation of the amount of the following credits used and refunded for the reported year by the certified business, or by the taxpayers within the certified business including its shareholders, members, partners or the owner of a sole proprietorship; wage tax credits, investment tax credits, employment incentive tax credits, real property tax credit, and tax reduction credit; and

(e) Other benefits; estimated valued to the certified business of the sales tax benefits for the reported year.

The local [economic development zone administrator] empire zone administrative board shall send [copies of each report up] such reports to the Commissioner. [of Labor and the Commissioner of Economic Development]

11.8 Denial of certification.

(a) The Commissioner may deny a business enterprise's application for certification based upon any of the criteria set forth in section 11.4 of this Part. If the Commissioner has denied a business enterprise's application for certification, the Commissioner shall notify the business enterprise of such denial and its right to a hearing pursuant to the procedures set forth in Part 13 of this Title in writing in a Notice of Denial of Certification. A Notice of Denial of Certification may be served by the Department on the business enterprise by certified, registered or overnight mail sent to the business enterprise at the address for the business enterprise indicated on its application.

(b) A business enterprise that has been denied certification by the [local economic development zone administrator and the] Commissioner[s] of Economic Development [and Labor] may request a hearing within

30 days of its receipt of the Notice of [denial] Denial of [certification] Certification. Failure to request a hearing within 30 days will be deemed a waiver of the business enterprise's right to a hearing.

11.9 Revocation of certification.

(a) The [local economic development zone administrator and the Commissioners] Commissioner [of Labor and Economic Development] may [jointly] revoke the certification of a business enterprise upon a finding [that the business enterprise materially failed, without good cause, to fulfill its commitments to the State and to the municipality. Grounds for such a finding may include, but are not limited to,] of any one of the following:

(1) the business enterprise made material misrepresentations of fact on its application for certification or on a business annual report, or the business enterprise failed to disclose facts in its application for certification that would constitute grounds for not issuing a certification;

(2) the business enterprise has failed to construct, expand, rehabilitate, invest in or operate its facility substantially in accordance with the representations contained in its application for certification;

(3) the business enterprise has failed to create new employment or prevent a loss of employment in the [economic development zone] empire zone; [provided, however, that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control.]

(4) the business enterprise has failed to submit an annual report pursuant to section 11.7 of this Part by the deadline established by the Commissioner after it has applied for zone [incentives] tax benefits or program assistance based on new hires or investments or failed to submit other information[; to the local economic development zone administrator when due]; [and

5) the business enterprise has violated one or more laws for the protection of workers, including the National Labor Relations Act, 29 U.S.C.S. sections 151-168.]

(5) the business enterprise has changed ownership or moved its operations out of the empire zone; or

(6) the business enterprise has failed to pay the projected wages and benefits and to make the projected capital investments as set forth in the cost benefit analysis provided on the business enterprise's application for certification.

(b) The Commissioner may also, upon the recommendation of the Commissioner of Labor, revoke the certification of a business enterprise or the single business enterprise to which it belongs upon a finding that the business enterprise has committed substantial violations of laws for the protection of workers including all federal, state and local labor laws, rules or regulations.

(c) The Commissioner shall revoke the certification of a business enterprise upon a finding that:

(1) if certified prior to the first day of August, two thousand two, the business enterprise caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York State to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership regardless of form of incorporation or organization; or

(2) a business enterprise that has submitted at least three years of business annual reports has failed to provide economic returns to the state in the form of total remuneration to its employees (i.e., wages and benefits) and investments in its facility that add to a greater value than the tax benefits the business enterprise used and had refunded to it; a business enterprise that has submitted at least three years of business annual reports shall have failed this analysis if the sum of (i) the actual value of all wages and benefits paid to all employees of the business enterprise in the zone, as indicated in the business enterprise's business annual reports submitted and reporting for any of the years from and including two thousand and one through and including two thousand and seven, and (ii) the value of capital investments in the zone, as indicated in the business enterprise's business annual reports submitted and reporting for any of the years from and including two thousand and one through and including two thousand and seven, does not exceed the total amount of state

tax benefits the business enterprise used and had refunded to it or its members, partners or shareholders under the empire zones program as indicated in the business annual reports submitted and reporting for any of the years from and including two thousand and one through and including two thousand and seven;

provided, however, if the Commissioner makes the finding described in clause 1 above or the business enterprise fails the analysis described in clause 2 above, the Commissioner may consider, after consultation with the Director of the Budget, and in his or her sole discretion, other economic, social and environmental factors when evaluating the benefits of a project in the state and whether continued certification is warranted based on such factors. The effective date of decertification pursuant to this section 11.9(c) shall be January 1, 2008.

[(b)] (d) Prior to the Commissioner[s] of Economic Development [and Labor and the local economic development zone administrator] rendering a decision revoking a business enterprise's certification pursuant to section 11.9(a) or section 11.9(b) of this Part, the Department [of Economic Development] shall notify the business enterprise of the intent to revoke the certification of the business enterprise (“Notice of Intent to Revoke Certification”) and its right to a hearing pursuant to the procedures set forth in Part [12] 13 of this Title. A Notice of Intent to Revoke Certification pursuant to section 11.9(a) or section 11.9(b) of this Part may be served by the Department on the business enterprise by certified, registered or overnight mail sent to the business enterprise at the address for the business enterprise indicated on the last annual report filed by the business enterprise in accordance with section 11.7 of this Part. A business enterprise shall have 30 days within which to request a hearing from its receipt of the [n] Notice of [i] Intent to [r]Revoke [c]Certification [and opportunity for a hearing] that was sent pursuant to section 11.9(a) or (b) of this Part. Failure to request a hearing within such 30 [days] day period will be deemed a waiver of the business enterprise's right to a hearing.

[(c)](e) Notice of Revocation of Certification pursuant to section 11.9(a) or section 11.9(b) of this Part shall be served by certified, [or] registered or overnight mail to the business enterprise by the [counsel to the

economic development zones board] Department. The [counsel to the economic development zones board] Department shall simultaneously send copies to the Commissioners of Labor, [Economic Development,] Taxation and Finance, the chair of the local [economic development zone administrator] zone administrative board and any applicable utility company.

(f) The Commissioner is under no obligation to send a Notice of Intent to Revoke Certification to a business enterprise prior to rendering a decision to revoke the certification of a business enterprise pursuant to section 11.9(c) of this Part. If the Commissioner has revoked the certification of a business enterprise pursuant to section 11.9(c) of this Part, the Commissioner shall notify the business enterprise of such revocation in writing in a Notice of Revocation of Certification. Such Notice shall explain the reason or reasons for the revocation of certification, and shall refer to the particular section or sections of laws and regulations that are the basis for such revocation. Such Notice shall state the effective date of decertification, and advise the business enterprise that it may appeal the revocation in accordance with Part 14 of this Title. A Notice of Revocation of Certification pursuant to section 11.9 (c) of this Part may be served by the Department on the business enterprise by certified, registered or overnight mail sent to the business enterprise at the address for the business enterprise indicated on the last annual report filed by the business enterprise in accordance with section 11.7 of this Part.

11.10 Recertification after revocation

Pursuant to the procedures set forth in section 11.5 of this Part, a business enterprise may be [re]certified after its certification has been revoked, upon a showing that the conditions which resulted in the revocation of certification have been resolved. The effective date of certification for a business enterprise that is certified after revocation shall be the effective date of the enterprise's original certification and the Tax Law, rules and regulations in place on the date of the first certification shall apply, provided that the enterprise shall not be

eligible for empire zone tax benefits during the period when its certification was revoked. Provided further, a business enterprise seeking certification after revocation shall be subject to the laws, rules, and regulations governing certification in effect at that time.

PART 12

RECORD KEEPING, INSPECTION AND AUDIT

12.1 Record keeping

The business enterprise shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to the information provided in its application for certification and its business annual reports (collectively, the “Records”). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter.

12.2 Inspection and audit

The Department, the Department of Taxation and Finance, and the Department of Labor shall have access to the Records during normal business hours at an office of the business enterprise within the State of New York for the term specified in section 12.1 of this Part above for the purposes of inspection, auditing and copying. The aforementioned agencies shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law provided that: (i) the business enterprise shall timely inform an appropriate official from the agency conducting the inspection and audit, in writing, that said records should not be disclosed; (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under Section 87 of the Public Officers Law is reasonable. Nothing herein shall diminish, or in any way adversely affect, New York State’s right to discovery in any pending or future litigation.

PART [12] 13

[HEARING] PROCEDURES FOR APPEALING A DENIAL OF CERTIFICATION PURSUANT TO SECTIONS 11.5 AND 11.8 OF PART 11 OF THIS TITLE AND REVOCATION OF CERTIFICATION PURSUANT TO SECTIONS 11.9(a) AND 11.9(b) OF PART 11 OF THIS TITLE

[12.1] 13.1 Applicability.

This Part shall apply to all [adjudicatory proceedings to which the Department of Economic Development is a party brought pursuant to Article 18-B of the General Municipal Law] appeals of denials of certification pursuant to sections 11.5 and 11.8 of Part 11 of this Title and revocations of certification pursuant to sections 11.9(a) and 11.9(b) of Part 11 of this Title.

[12.2] 13.2 Definitions.

[(a) Administrative tribunal means the three member board consisting of the Commissioners of Economic Development and Labor or their designees, and the local economic development zone administrator.]

[(b)](a) CPLR means the Civil Practice Law and Rules.

[(c)](b) Party means the staff of the Department of Economic Development [and Labor, and the local economic development zone board,] and all persons designated as petitioner, respondent, or intervenor in any adjudicatory proceeding subject to this Part.

[(d)](c) Report means the hearing officer's summary of the hearing record, including their findings of fact, conclusions and recommendations on the findings.

[12.3] 13.3 Designation of hearing officer.

(a) The designation of a hearing officer shall be made by the Commissioner of Economic Development in writing and filed with the Department of Economic Development.

(b) Upon being notified that a hearing officer declines or fails to serve, or in the case of death, resignation or removal of a hearing officer, a successor hearing officer shall be designated by the Commissioner of Economic Development to continue the proceeding.

[12.4] 13.4 Notice of hearing.

(a) The notice of hearing shall contain a statement of the legal authority and jurisdiction under which the proceeding is to be held; a reference to the particular sections of the statutes and regulations not satisfied or violated; a short and plain statement of the matters asserted or at issue; and the time, place and date for a hearing no later than 60 days following receipt of the request for a hearing.

(b) The notice of hearing shall be served at least 30 days prior to the date of the hearing and shall be by certified or registered mail, or by service consistent with article 3 of the CPLR. Where service is by mail, service shall be deemed complete five days after mailing.

[12.5] 13.5 Adjournment.

A request for an adjournment of the hearing should be in writing and submitted to the hearing officer and other parties prior to the hearing. Adjournments shall be granted only by the hearing officer and only after the hearing officer has consulted all parties. When granted, adjournments should be to a specified time, day and place.

[12.6] 13.6 Responsive pleadings.

(a) The respondent shall file and other parties may file a responsive pleading. All responsive pleadings must be served upon the hearing officer, members of the administrative tribunal and other parties. The responsive pleading shall specify which allegations are admitted, which allegations are denied and which allegations a party has insufficient information upon which to form an opinion.

(b) The responsive pleading shall be served within 20 days of receipt of the notice of hearing by a party.

[12.7] 13.7 Amendment of pleadings.

Any party may amend or supplement a pleading at any time prior to the submission of the hearing officer's report to the administrative tribunal, by leave of the hearing officer, if there is no substantial prejudice to any other party.

[12.8] 13.8 Service of papers.

All notices and papers connected with a hearing, other than the notice of hearing may be served by first class mail. Except where otherwise provided, service by mail shall be deemed complete five days after mailing.

[12.9] 13.9 Disclosure.

(a) (1) Upon the service of a notice of hearing, any party to the proceeding may demand in writing from any other party disclosure of any of the following, which such other party intends to introduce at the hearing:

(i) names of witnesses; however, a summary of the testimony to be given by the witnesses shall not be required to be disclosed;

(ii) a list of documentary evidence;

(iii) photocopies of documentary evidence listed in subparagraph (ii) of this paragraph in the possession of the party upon whom the demand has been made; and

(iv) a brief description of physical or other evidence which cannot be photocopied.

(2) The demand for disclosure shall be made at least 15 days prior to the first scheduled date of the hearing.

At least seven days prior to the first scheduled date of the hearing, the party upon whom the demand has been made shall make the disclosure described in subparagraphs (1) (i) through (iv) of this subdivision or a statement that the party does not have anything to disclose. If, after such disclosure or statement, a party determines to present witnesses or introduce evidence not previously disclosed, the party shall disclose the same as soon as practicable.

(3) Upon application of any party, the hearing officer:

(i) upon good cause shown, may allow demands and responses within time periods other than those described in paragraph (2) of this subdivision;

(ii) shall allow a party not to disclose information or material protected by statutory or case law from disclosure;

(iii) upon good cause shown, may limit, condition or regulate the use by the party to whom disclosure is made of information or material disclosed; and

(iv) may preclude a party that unreasonably fails to respond to a timely demand for disclosure or to supplement its disclosure from introducing evidence or presenting witnesses not disclosed.

[12.10] 13.10 The hearing officer.

(a) No hearing officer shall preside who has any bias with respect to any matter involved in the hearing. No hearing officer shall communicate, directly or indirectly, in connection with any issue that relates in any way to the merits of a hearing pending before the hearing officer with any person except upon notice and opportunity for all parties to participate. A hearing officer may consult on questions of law with supervisors or agency attorneys, provided that such supervisors, or attorneys have not been engaged in investigative or prosecuting

functions in connection with the hearing under consideration or a factually related hearing. A hearing officer may also consult with supervisors, support staff or court reporters on ministerial matters such as scheduling or the location of a hearing. Any party may file in good faith with the Department of Economic Development a request, together with a supporting affidavit, that a hearing officer be removed on the basis of personal bias or other good cause.

(b) The hearing officer shall conduct the hearing in a fair and impartial manner.

(c) The hearing officer shall have the power to:

(1) rule upon requests, including, but not limited to, all requests for adjournments;

(2) set the time and place of the hearing;

(3) administer oaths and affirmations;

(4) issue subpoenas requiring the attendance and testimony of witnesses and the production of books, records, contracts, papers and other evidence;

(5) summon and examine witnesses, including, but not limited to, the authority to direct a party, without necessity of subpoena, to appear and to testify;

(6) admit or exclude evidence;

(7) limit the number of times any witness may testify, repetitious examination or cross-examination, and the amount of corroborative or cumulative testimony;

(8) hear argument on facts or law;

(9) order the parties to appear for a prehearing conference to consider matters which may simplify the issues or expedite the proceeding;

(10) order that opening statements be made; and

(11) do all acts and take all measures necessary, but not otherwise prohibited by this Part, for the maintenance of order and the efficient conduct of the hearing.

(d) The hearing officer shall not have the power to:

- (1) remove testimony from the transcript by deletion, expungement or otherwise; and
- (2) dismiss the charges unless otherwise authorized by the administrative tribunal.

[12.11] 13.11 Stipulation and consent orders.

(a) At any time prior to issuance of the final order or determination, parties may enter into a stipulation for the resolution of any or all issues.

(b) The administrative tribunal may jointly issue a consent order upon agreement or stipulation of the parties. A consent order shall have the same force and effect as an order issued after a hearing.

[12.12] 13.12 The hearing.

(a) Appearances. (1) A party may appear in person or by an attorney. If a party appears by an attorney, service of papers shall be made upon the attorney.

(2) Any person appearing on behalf of a party in a representative capacity may be required to demonstrate authority to act in such capacity.

(3) If a party fails to appear at the hearing, issues on which the absent party has the burden of proof may be resolved against that party.

(4) At any time before a report is submitted to the administrative tribunal, the hearing officer may open a default or relieve any part of the consequences of any default upon good cause shown.

(b) Conduct of hearing and evidence. (1) Each witness shall be sworn or give an affirmation.

(2) The rules of evidence need not be observed.

(3) Each party shall have the right to present evidence and to cross-examine witnesses.

(4) All evidence presented shall be made a part of the record. All such documentary evidence may be received in the form of copies or excerpts or by incorporation by reference. In the case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received into evidence.

(5) The petitioner has the burden of proof and of going forward.

(c) Record. (1) A verbatim record of the proceedings shall be made by whatever means the Commissioner of Economic Development deems appropriate.

(2) The record of the hearing shall include: the notice of hearing, responsive pleadings, motions and requests and objections, and rulings thereon, the transcript or recording of the testimony taken at the hearing, exhibits, stipulations, if any, and any decision, determination, opinion, order or report rendered.

[12.13] 13.13 Hearing officer's report.

Within 30 days of the close of the record, including receipt of the transcript, the hearing officer shall prepare a report and submit it to the [administrative tribunal] Commissioner of Economic Development and to all parties.

[12.14] 13.14 Final determination and order.

(a) After receipt of the hearing officer's report, the [administrative tribunal] Commissioner of Economic Development shall make a final determination.

(b) The final determination shall be embodied in a written order which shall contain findings of fact and conclusions of law or reasons for the final determination. If the [administrative tribunal] Commissioner of Economic Development issues a decision that includes findings of fact or conclusions of law that conflict with the findings or conclusions of the hearing officer, it shall set forth in writing the reasons therefore.

(c) A copy of the order shall be served upon the parties by the Counsel to the [Economic Development Zones Board.] Commissioner of Economic Development.

[12.15] 13.15 Waiver of rules.

Any of the foregoing rules may be waived by agreement of the parties or, if a hearing has convened, by agreement of the parties and with consent of the hearing officer.

PART 14

PROCEDURES FOR APPEALING A REVOCATION OF CERTIFICATION PURSUANT TO SECTION 11.9(C) OF PART 11 OF THIS TITLE

14.1 Applicability.

This Part shall apply to all appeals of revocations of certification pursuant to section 11.9(c) of Part 11 of this Title.

14.2 Notice of Appeal

(a) A business enterprise that received a Notice of Revocation of Certification in accordance with section 11.9(c) of Part 11 of this Title may send a written notice to the Empire Zone Designation Board appealing the revocation of certification by no later than 15 business days from the date of the Notice of Revocation of Certification. Failure by a business enterprise to appeal the Commissioner's revocation of certification within the aforementioned 15 business day period will be deemed a waiver of the business enterprise's right to an appeal.

(b) Provided that the business enterprise sends a Notice of Appeal within the 15 business day period referred to in section 14.2 (a) of this Part to the address set forth in section 14.2(c) of this Part, the business

enterprise may send a written submission to the Empire Zone Designation Board no later than sixty days following the date of the Notice of Revocation of Certification explaining why its certification should be continued. This written submission must contain specific factual information (along with documentation establishing that information) and all legal arguments that demonstrate that the Commissioner's finding, with respect to clause 2 of section 11.9(c) of Part 11 of this Title, was in error, or that, with respect to clause 1 of section 11.9 (c) of Part 11 of this Title, any extraordinary circumstances occurred which would justify the continued certification of the business enterprise.

(c) All Notice of Appeals and written submissions to the Empire Zone Designation Board as described in section 14.2(b) of this Part shall be sent care of the Commissioner at the following address.

Commissioner of Economic Development

New York State Department of Economic Development

30 South Pearl Street

Albany, New York 12245

14.3 Authority of Empire Zone Designation Board

(a) The Empire Zone Designation Board shall evaluate the merits of the appeal. The Empire Zone Designation Board shall consider the Notice of Appeal provided by the business enterprise, but shall only reverse the determination to revoke the business enterprise's certification if the Empire Zone Designation Board unanimously finds that there was sufficient evidence presented demonstrating that the Commissioner's finding, with respect to clause 2 of section 11.9(c) of Part 11 of this Title was in error, or that, with respect to clause 1 of section 11.9(c) of Part 11 of this Title, any extraordinary circumstances occurred which would justify the continued certification of the business enterprise.

14.4 Appeal Decision.

The Empire Zone Designation Board will issue a decision and serve a copy on the business enterprise or its representative.

PART [13] 15

ZONE CAPITAL CORPORATIONS

[13.1] 15.1 Purpose and scope.

Prior to the establishment of a zone capital corporation, the Commissioner [of Economic Development] must approve of: its formation; board of directors and management; and procedures for making, servicing and monitoring investments. The purpose of these regulations is to set forth the requirements and procedures for obtaining such approval, as well as operating and reporting requirements.

[13.2] 15.2 Establishment and purpose of a zone capital corporation.

No more than three [economic development zone] empire zone capital corporations may be established in each zone for the purpose of raising funds through private and public grants, donations and investments, to be used in making investments in and loans to certified zone businesses for the purpose of encouraging the establishment or expansion of businesses and the creation of new jobs within the zone. A zone capital corporation may serve one or more zones within an economic development region, established pursuant to article 11 of the Economic Development Law, or zones within two or more of such regions.

[13.3] 15.3 Loans and investments.

(a) Within a zone located within one or more municipalities with a total population of more than 25,000, an [economic development zone] empire zone capital corporation must accumulate at least \$200,000 in capital stock before any investment in or loan to any business may be made. Within a zone located within one or more municipalities with a total population of 25,000 or less, a zone capital corporation must accumulate at least \$100,000 in capital stock before any business loan or investment may be made.

(b) In no event may an [economic development zone] empire zone capital corporation acquire an ownership interest in any zone certified business amounting to over 25 percent of the ownership interest of such business.

[13.4] 15.4 Operating procedures.

(a) Each zone capital corporation must establish an investment committee for the purpose of evaluating applications for loans and equity investments. Such committee must include members with the business and financial expertise necessary to evaluate applications for loans and/or equity investments.

(b) To the maximum extent feasible, each [economic development zone] empire zone capital corporation must undertake measures and procedures to ensure meaningful participation by minority and women-owned businesses, as well as locally owned business enterprises in the activities and investments of the corporation.

[13.5] 15.5 Application; approval process.

(a) Application for formation of an [economic development zone] empire zone capital corporation; its board of directors and management; and procedures for making, servicing and monitoring its investments, shall be made on a form prescribed by the Commissioner [of Economic Development] which shall include, but not be limited to:

- (1) identification of applicant;
- (2) narrative description of the geographic area the proposed zone capital corporation includes;

(3) names and resumes of proposed zone capital corporation board of directors, management, and investment committee;

(4) proposed articles of incorporation and proposed bylaws for the zone capital corporation;

(5) proposed zone capital corporation management plan; and

(6) description of proposed investment procedures, including:

(i) procedures for originating and servicing investments and loans;

(ii) procedures for ensuring meaningful participation by women and minority owned businesses and locally owned businesses; and

(iii) underwriting criteria.

An Opinion of Counsel must accompany any information supplied by a proposed zone capital corporation regarding procedures for originating and servicing investments and loans and underwriting criteria. An affirmation of facts must accompany any information supplied in an application for purposes of securing the approvals referenced in subdivision (b) of this section.

(b) Applications shall be reviewed by the local [economic development zone] empire zone administrative board to determine whether they are complete and meet the requirements of zone capital corporations enumerated in section 964 of the General Municipal Law. The local [economic development zone] empire zone administrative board shall forward all applications and their approval or disapproval to the Commissioner [of Economic Development] for approval or disapproval.

(c) Final approval of the formation of a zone capital corporation will be subject to receipt by the department, subsequent to its contingent approval, of the filing notice and certificate of incorporation for the proposed zone capital corporation.

[13.6] 15.6 Reporting requirements.

A zone capital corporation shall submit to the local [economic development zone] empire zone administrative board an annual report on its activities, which shall include but not be limited to:

(a) annual year end financial statements, audited by a certified public accountant, itemizing any and all loans and/or investments and indicating the purpose of such loans and/or investments;

(b) certification by a certified public accountant that the zone capital corporation did not acquire an equity position of over 25 percent in any certified zone business; and

(c) a signed statement from each investor in and/or contributor to the zone capital corporation claiming a zone capital tax credit, indicating the amount of such credit and the tax year proposed to claim such a credit.

PART [14] 16

ZONE CAPITAL CREDITS

Section [14.1] 16.1 Purpose and scope.

The purpose of these regulations is to describe and set forth the criteria of eligibility for [economic development] empire zone capital tax credits. Upon certification by the Commissioner, an [economic development] empire zone capital tax credit of 25 percent of the following qualified investments will be allowed: investments or contributions to an [economic development] empire zone capital corporation, direct equity investments in certified zone businesses and contributions of money to certain community development projects.

[14.2] 16.2 Qualified investments and contributions. (a) The [economic development] empire zone capital tax credit of 25 percent will be allowed, upon certification by the Commissioner, for the following investments and contributions:

(1) Qualified investment made in, or contributions in the form of donations made to, one or more [economic development] empire zone capital corporations;

(2) Qualified investments in certified zone businesses that during the 12-month period immediately preceding the month in which the investments were made employed full-time within the state an average number of individuals (excluding general executive officers) of 250 or fewer, computed pursuant to the [economic development] empire zone wage tax credit provisions of section 210 of the Tax Law. However, investments made by or on behalf of an owner of the business, including, but not limited to, a stockholder, partner, or sole proprietor, or any related person, as defined in subdivision (b) (3) (C) of section 465 of the Internal Revenue Code, are not qualified investments; and

(3) Contributions of money to community development projects.

(b) Tax implications resulting from the sale, transfer or disposition of an interest arising from a qualified investment or contribution shall be pursuant to sections 210.20 (d), 606(1), 1456(d) and 1511(h) of the State Tax Law.

[14.3] 16.3 Availability, apportionment and amount. (a) The total amount of zone capital tax credits available to each zone shall be \$2.5 million dollars; provided, however, that no more than \$500,000 in zone capital tax credits shall be available in any zone for qualified investments in certified zone businesses. The total amount of zone capital tax credits allowable to a taxpayer for all years, taken in the aggregate, may not exceed \$300,000 with respect to the total of qualified investments and contributions, and may not exceed \$100,000 with respect to the investments and contribution described in each of paragraphs (1) and (3) of section 16.2(a) of this Part. Carryover of economic development zone capital tax credits shall be pursuant to sections 210.20 (b), 606(1), 1456(d) and 1511(h) of the State Tax Law.

(b) Apportionment of zone capital tax credits within a zone between capital investments in and contributions to zone capital corporations, direct equity investments in certified zone businesses and contributions to community development projects shall be determined and accounted for by the local economic development zone administrative board in consultation with the zone administrative entity. The local economic development zone administrative board shall notify the Commissioner of the apportionment of zone capital tax credits within the zone on a form prescribed by the Commissioner.

[14.4] 16.4 Criteria of eligibility. (a) In order for a qualified direct equity investment to be certified by the Commissioner to be eligible for economic development zone capital tax credits, it must be demonstrated that:

(1) the investment in a certified zone business will contribute, significantly, to an activity having tangible economic benefits, such as start-up, expansion or industrial modernization of the certified zone business;

(2) the certified zone business has the potential to create jobs; and

(3) the direct equity investment is necessary to increase the amount of capital available to the certified zone business, provided, however, that such investment is not intended nor will be used to refinance existing debt or replace existing equity in such zone business.

(b) In order for a qualified contribution to a community development project to be certified for the purpose of becoming eligible for [economic development] empire zone capital tax credits, it must be demonstrated that it will advance the zone development plan designed to promote the development of new business and the expansion of existing business within the zone where the contribution is proposed.

[14.5] 16.5 Determination for certification. The local economic development zone administrative board shall, in accordance with these regulations, determine the eligibility of direct equity investments in certified zone

businesses and contributions to community development projects for zone capital tax credits. This determination shall be subject to review by the Commissioner who shall accept or reject the determination of the local economic development zone administrative board in accordance with criteria set forth in section 16.4 of this Part.

16.6 Community development projects. (a) All community development projects as defined in section 10.2(e) of Part 10 of this Title approved by the Commissioner prior to April 1, 2005 herein shall be considered to be located in the applicable zone regardless of the designation of distinct and separate contiguous areas pursuant to section 10.4 of Part 10 of this Title.

(b) Any request to revise the boundaries of an existing empire zone to include a community development project shall not be submitted until the provisions of this subdivision are satisfied and the designation of the distinct and separate contiguous areas are submitted as required by section 10.4 of Part 10 of this Title unless the local empire zone administrative board demonstrates that prior to April 1, 2005 it had been working in conjunction with a business for the purpose of submitting a boundary revision that would result in the creation of jobs within the zone. Such project shall be considered to be located in the zone even if it is not located in the distinct and separate contiguous areas for purposes of section 10.4 of Part 10 of this Title. Such community development project shall be deemed to have been certified prior to April 1, 2005.

