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PART 220 OF THE REGULATIONS OF THE COMMISSIONER OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT ARE ADDED TO READ AS FOLLOWS:

PART 220

SUNY TAX-FREE AREAS TO REVITALIZE AND TRANSFORM UPSTATE NEW YORK (START-UP NY) PROGRAM.

220.1 Purpose and general description.

a. The purpose of these regulations is to establish procedures and guidelines for the SUNY Tax Free Areas to Revitalize and Transform Upstate New York Program ("START-UP NY Program") established by Article 21 of the Economic Development Law ("EDL"). Pursuant to Sections 435 and 436 of the EDL, the Commissioner of Economic Development is authorized to promulgate regulations to establish, among other things, 1) a process for the submission and approval of Plans to designate Tax-Free NY Areas, 2) the eligibility criteria that will be applied in evaluating those Plans, 3) a process for the evaluation and possible rejection of applications by businesses desiring to participate in the START-UP NY Program, 4) eligibility criteria that will be applied in evaluating those applications, 5) a process for terminating a business from the START-UP NY Program, and 6) a process for administrative appeals of such terminations.

b. The START-UP NY Program is intended to promote entrepreneurialism and job creation by transforming higher education to create tax-free communities across the State, particularly in upstate New York, to attract high-tech and other start-ups, venture capital, new business and investments from across the world. The START-UP NY Program is intended to help companies, especially high-tech and start-up businesses, to start, grow and stay in New York.

220.2 Definitions.

As used in this regulation, the following terms shall have the following meanings:

a. "Academic mission" means any official academic mission announced and adopted by any university or college seeking approval as a Sponsor of a designated Tax-Free NY Area. Such academic mission may consider, among other things, the institution's comprehensive undergraduate, graduate education and/or professional education curriculum; research; leadership role in the community; diversity and culture; regional economic development; internship and training opportunities; direct job opportunities for graduates; international outreach; specific area specialization within the university or college; and any other factors which the university or college deems to be appropriate in defining academic mission for purposes of the START-UP NY Program.
b. "Affiliated" means connected, related, or associated with.
c. "Application" means a submission from an eligible business for approval to participate in the START-UP NY Program.
d. "Bona fide affiliation" means a relationship between a New York State Incubator or a Hot Spot sponsored or administered by a university or college, documented by a certificate of incorporation, by-laws, memorandum of understanding or similar document detailing the relationship between the parties and the rights, responsibilities and expectations of the parties, including but not limited to financial commitments, shared use of staff, facilities or resources.
e. "Business in the formative stage" means a company in the start-up or early stage of development with a product, service, software, or research that is not yet in the commercial marketplace, but which can show continued and steady maturity towards commercialization and profitability either by product development, external funding or product sales.
f. "Campus" means any real property in New York State owned or leased by a university or college, held in trust for a university or college, or owned or leased by an affiliated not-for-profit entity on behalf of a university or college or for the benefit of a university or college, and can include any such additional real property acquired, established, operated or contracted to be operated for or on behalf of the university or college. Real property owned or leased by a not-for-profit entity on behalf of a university or college

or for the benefit of a university or college must be utilized by the university or college in furtherance of any stated academic mission of that university or college.

g. "City University" or "CUNY" means the City University of New York as described in Section 6202(2) of the Education Law, including each senior college and each community college.

h. "Commissioner" means the Commissioner of Economic Development.

i. "Community" means the census tract or tracts containing an approved Tax-Free NY Area and the census tracts immediately contiguous to such census tract or tracts.

j. "Community college" means a college established pursuant to the provisions of Article 126 of the Education Law, and providing two-year or four-year post-secondary programs in general and technical educational subjects and receiving financial assistance from the State other than a community college of CUNY.

k. "Competitor" means a business that produces, manufactures, or sells the same or substantially similar product or provides the same services, and competes for the same customers or clients as an applicant for the START-UP NY Program.

l. "College" means a not-for-profit educational institution given the power to confer associate, baccalaureate or higher degrees in this State by the Legislature or under the Education Law.

m. "Contract" can mean any agreement, including but not limited to a subcontract, lease, grant, bond, or covenant between two or more entities.

n. "Correctional Facility" shall have the same meaning as defined in Section 431 of the EDL, and designation of which shall be provided in accordance with Section 435 of the EDL.

o. "Department" means the New York State Department of Economic Development.

p. "Directly adjacent" means next to, adjoining or sharing a common border or boundary.

q. "Downstate New York" means Nassau, Suffolk, and Westchester counties, and the counties of New York City (New York, Queens, Kings, Richmond, and Bronx).

r. "Economically distressed community" means a community identified as having such criteria indicative of economic distress, including but not limited to rates of poverty,

receipt of public assistance, or unemployment as the Commissioner deems appropriate to demonstrate that a community is in need of economic assistance.

s. "EDL" means the Economic Development Law.

t. "Eligible land" means vacant land or space that is eligible for designation as a Tax-Free NY Area.

u. "High tech business" means a business engaged in the design, development, and introduction of new biotechnology, information technology, remanufacturing, advanced materials, processing, engineering or electronic technology products and/or innovative manufacturing processes, and meet such other requirements for a high-tech business as the Commissioner shall develop.

v. "Incubator graduate" means a business which has been certified as having successfully completed residency in a New York State Incubator or Innovation Hot Spot after having met the milestone or benchmark requirements established by the Incubator or Hot Spot management for business growth including such factors as growth in employment, sales, profitability and physical space.

w. "Lease" means any contract or agreement that provides terms and conditions for occupancy of land or space.

x. "Local economic development entity" means a public agency or affiliated not-for-profit corporation including, but not limited to, an economic development or industrial development agency, local development corporation, local planning or development council, and all other such entities concerned with the economic development of the municipality or county within which the Tax-Free NY Area is designated or is proposed for designation.

y. "Municipality" means a city, town or village for all counties excluding those of Bronx, Kings, New York, Queens and Richmond counties. For the counties of Bronx, Kings, New York, Queens and Richmond, "municipality" means the City of New York.

z. A "net new job" means a job created by a business participating in the START-UP NY Program during its period of certification in a Tax-Free NY Area that satisfies all of the following criteria:

1) is new to the State;
2) has not been transferred from employment with another business located in this State, through an acquisition, merger, consolidation or other reorganization of businesses or the acquisition of assets of another business, or except as provided in Section 431(6)(d) of the EDL and Section 220.6(c) herein, has not been transferred from employment with a related person in this State;
3) is not filled by an individual employed within the State within the immediately preceding 60 months by a related person;
4) is either a full-time wage-paying job or equivalent to a full-time wage-paying job requiring at least 35 hours per week; and
5) is located in a Tax-Free NY area and filled for more than six months during each year for which the tax benefits are being granted.

aa. A "new business" means a business that satisfies the following conditions:

1) the business must not be operating or located within the State as of the date it submits its application to participate in the START-UP NY Program;
2) the business must not be moving existing jobs into the Tax-Free NY area from another area in the State;
3) the business is not substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable within the last five taxable years, under Sections 183, 184, 185 or 186 of the Tax Law; Articles 9-A, 32, or 33 of the Tax Law; Article 23 of the Tax Law or which would have been subject to tax under Article 23 of the Tax Law (as such article was in effect on January 1, 1980), or the income or losses of which is or was includable under Article 22 of the Tax Law; and
4) the business must not have caused individuals to transfer from existing employment with a related person located in the State to similar employment with the business, unless such business has received approval for such transfers from the Commissioner after demonstrating that the related person has not eliminated those existing positions.

bb. "New York State Incubator" or "Incubator" means a business incubator program which also provides physical space that has been designated according to the requirements of Section 16-v of the Urban Development Corporation Act.

cc. "New York State Innovation Hot Spot" or "Hot Spot" means an Incubator that has been designated as a Hot Spot according to the requirements of Section 16-v of the Urban Development Corporation Act.

dd. "Plan" means a submission from eligible colleges or universities for approval of eligible land or vacant space for designation as a Tax-Free NY Area pursuant to Section 220.7, 220.8, or 220.9 herein.

ee. "Private university or college" means a not-for-profit two- or four-year university or college given the power to confer associate, baccalaureate or higher degrees in this State by the Legislature or by the Regents under Article 5 of the Education Law.

ff. "Program" means the START-UP NY Program, unless otherwise indicated.

gg. A "related person" means a "related person" as defined in 26 U.S.C. § 465(b)(3)(C). At the time of this rulemaking, the Internal Revenue Service has interpreted "related person" to include the following:

1) Members of a family, but only an individual's brothers and sisters, half-brothers and half-sisters, a spouse, ancestors (parents, grandparents, etc.), and lineal descendants (children, grandchildren, etc.).
2) Two corporations that are members of the same controlled group of corporations determined by applying a 10% ownership test.
3) The fiduciaries of two different trusts, or the fiduciary and beneficiary of two different trusts, if the same person is the grantor of both trusts.
4) A tax-exempt educational or charitable organization and a person who directly or indirectly controls it (or a member of whose family controls it).
5) A corporation and an individual who owns directly or indirectly more than 10% of the value of the outstanding stock of the corporation.

6) A trust fiduciary and a corporation of which more than 10% in value of the outstanding stock is owned directly or indirectly by or for the trust or by or for the grantor of the trust.
7) The grantor and fiduciary, or the fiduciary and beneficiary, of any trust.
8) A corporation and a partnership if the same persons own over 10% in value of the outstanding stock of the corporation and more than 10% of the capital interest or the profits interest in the partnership.
9) Two S corporations if the same persons own more than 10% in value of the outstanding stock of each corporation.
10) An S corporation and a regular corporation if the same persons own more than 10% in value of the outstanding stock of each corporation.
11) A partnership and a person who owns directly or indirectly more than 10% of the capital or profits of the partnership.
12) Two partnerships if the same persons directly or indirectly own more than 10% of the capital or profits of each.
13) Two persons who are engaged in business under common control.
14) An executor of an estate and a beneficiary of that estate.

hh. A “Sponsor” or “sponsoring university or college” means a university or college that has received approval to sponsor a Tax-Free NY area or is affiliated with a Strategic State Asset as designated by the START-UP NY Approval Board pursuant to Sections 220.5, 220.7, 220.8, or 220.9 herein.

ii. The “START-UP NY Approval Board” or “Board” means a board consisting of three members, one each appointed by the Governor, the Speaker of the Assembly and the Temporary President of the Senate. Each member of the START-UP NY Approval Board must have significant expertise and experience in academic-based economic development and may not have a personal interest in any project that comes before the Board.

jj. “State university” or “SUNY” means the State University of New York as described in Section 352 of the Education Law.

kk. "Strategic State Asset" means land or a building or group of buildings owned by the State of New York that is closed, vacant, or for which notice of closure has been given pursuant to any statutory notice requirement or which is otherwise authorized to be closed pursuant to any chapter of the laws of New York.

ll. "Tax-Free NY Area" means the land or vacant space of a university or college and designated area of a New York State Incubator that meets the eligibility criteria specified in Article 21 of the EDL and has been approved as a Tax-Free NY Area pursuant to Sections 220.5, 220.7, 220.8, or 220.9 herein. It also means a Strategic State Asset that has been approved by the START-UP NY Approval Board.

mm. An "underutilized property" means vacant or abandoned land or space in an existing industrial park, manufacturing facility, a brownfield site as defined in Article 27 of the Environmental Conservation Law, or a distressed or abandoned property, which shall be determined by factors including poverty, identified by the county or the town, village or city that contains such distressed or abandoned property, as of June 20, 2013. A university or college shall work with local municipalities or local economic development entities to identify underutilized properties.

nn. "University" means a not-for-profit educational institution given the power to confer associate, baccalaureate or higher degrees in this State by the Legislature or under the Education Law.

oo. "Upstate New York" means all counties in New York State except Nassau, Suffolk, and Westchester counties, and the counties of New York City (New York, Queens, Kings, Richmond and Bronx).

220.3 Role of the Commissioner.

a. The Commissioner reviews and approves all Plans for approval of eligible land or vacant space as a Tax-Free NY Area from SUNY, CUNY, and community colleges that wish to become a Sponsor, except those required by Section 435 of the EDL to be reviewed by the START-UP NY Approval Board. As part of this review and approval process, the

Commissioner can consider any information available, including all information submitted by the Sponsor applicants.

b. The Commissioner reviews all business applications and may reject any applications from businesses that wish to locate onto an approved Tax-Free NY Area and participate in the Program. As part of this review process, the Commissioner can consider any information available, including all information submitted by the business.

c. The Commissioner tracks and reports on Statewide eligible space available for approval as a Tax-Free NY Area and for purposes of tracking and managing, among other things, the aggregate amount of Tax-Free NY Areas and aggregate number of net new jobs approved for personal income tax benefits.

d. The Commissioner tracks and reports on the number of Plans for approval as a Tax-Free NY Area and applications from businesses for approval to participate in the START-UP NY Program.

e. The Commissioner tracks and reports on the number of eligible employees for the personal income tax benefit and permitted under the Program.

f. The Commissioner receives, reviews and acts on reports on businesses participating in the Program regarding, among other things, new job creation and other eligibility criteria.

g. The Commissioner reviews and may remove any business from the Program that fails to meet the eligibility requirement of Article 21 of the New York State Economic Development Law or any of the requirements herein.

h. The Commissioner submits reports as required by Article 21 of the EDL and any of the requirements herein.

220.4 START-UP NY Approval Board.

a. Each member of the START-UP NY Approval Board shall be entitled to designate a representative to attend meetings of the board in his or her place, and to vote or otherwise act on his or her behalf in his or her absence. Notice of such designation shall be furnished in writing to the Board by the designating member. A representative shall

serve at the pleasure of the designating member. A representative shall not be authorized to delegate any of his or her duties or functions to any other person.

b. The Board is responsible for the review and approval of Plans for approval as a Tax-Free NY Area from private universities and colleges that wish to become a Sponsor. The Board also reviews and approves Plans submitted by certain SUNY, CUNY, or community college campuses seeking designation of Tax-Free NY Areas as described in Section 220.5 herein.

c. The Board, by majority vote, shall also designate as Tax-Free NY Areas up to 20 Strategic State Assets and Correctional Facilities, as defined in Section 220.2 herein. Each Strategic State Asset and Correctional Facility shall be affiliated with a SUNY, CUNY, community college, or private university or college and such designation shall require the support of the affiliated university or college. Each Strategic State Asset may not exceed a maximum of 200,000 square feet of vacant land or vacant building space designated as a Tax-Free NY Area.

d. In addition, the Board may approve: 1) one Plan that includes eligible land owned or leased by a CUNY that is directly adjacent to a CUNY campus; 2) one Plan that includes eligible land owned or leased by a SUNY, community college, or private university or college in Nassau county or Suffolk county that is directly adjacent to such college's or university's campus; and 3) one Plan that includes eligible land owned or leased by a SUNY, community college, or private university or college in Westchester County that is directly adjacent to such college's or university's campus. The Board may approve an additional Plan, for a SUNY, community college, or private university or college in Nassau or Suffolk County not previously approved, in which case it shall also approve a second Plan for eligible land or space not previously approved for a CUNY.

e. The Board shall endeavor to meet not less than quarterly to review, evaluate and vote on Plans.

f. Board members and their designees shall disclose to the Board any personal, business, or financial interest in (i) a Sponsor or (ii) a business that is participating in the Program or has applied to participate in the Program. A Board member, or designated

representative, shall recuse himself or herself from evaluating or voting on any Plan where a personal, business, or financial interest might reasonably tend to conflict with the proper discharge of his or her duties or otherwise create the appearance of a conflict of interest. Where practicable, a Board member who has recused himself or herself shall designate a representative to attend meetings of the Board and vote or otherwise act in his or her place.

220.5 Eligibility criteria for designation as a Tax-Free NY Area.

Only certain land and buildings located on the campuses of a SUNY or CUNY, community colleges, certain properties of private colleges and universities, certain properties outside the campuses of a SUNY or CUNY, community college or private colleges or universities, designated New York State Incubators and Strategic State Assets and Correctional Facilities, as defined in Section 220.2 herein, shall be eligible for designation as a Tax-Free NY Area.

a. For SUNY and community college campuses in upstate New York, excluding all Empire State College campuses except for the Empire State College campus in Saratoga Springs:

    1) Any vacant space in any building located on campus shall be eligible for designation as a Tax-Free NY Area.

    2) Any vacant land on campus shall be eligible for designation as a Tax-Free NY Area.

    3) Up to a total of 200,000 square feet of vacant land or vacant building space located within one mile of a perimeter of a SUNY or community college campus shall be eligible for designation as a Tax-Free NY Area.

        i. Upon application from such SUNY or community college and in consultation with the chancellor or his or her designee, the Commissioner may qualify identified vacant land or identified vacant space in a building that is located more than one mile from its campus as eligible for purposes of this Program if the Commissioner determines that the SUNY or community college

has shown that the use of the land or space will be consistent with the requirements of this Program.

4) A New York State Incubator with a bona fide affiliation to the SUNY or community college—which therefore must involve a partnership to provide assistance and physical space to eligible businesses towards the goals of jointly creating jobs and incubating new startup businesses, and which must be aligned with or furthering the academic mission of the SUNY or community college—shall be eligible for designation as a Tax-Free NY Area.

5) No academic programs, administrative programs, offices, housing facilities, dining facilities, athletic facilities, or any other facility, space or program that actively serves students, faculty or staff may be closed or relocated in order to create vacant land or space to be utilized for the Program.

b. For SUNY and community college campuses in Nassau, Suffolk, or Westchester counties:

1) Any vacant space in any building located on campus shall be eligible for designation as a Tax-Free NY Area.

2) Any vacant land on campus shall be eligible for designation as a Tax-Free NY Area.

3) A New York State Incubator with a bona fide affiliation to the SUNY or community college shall be eligible for designation as a Tax-Free NY Area.

4) Plans may be submitted to the START-UP Approval Board for designation of eligible lands directly adjacent to the campus as Tax-Free NY Area, described in Section 220.4(d) herein.

5) No academic programs, administrative programs, offices, housing facilities, dining facilities, athletic facilities, or any other facility, space or program that actively serves students, faculty or staff may be closed or

relocated in order to create vacant land or space to be utilized for this Program.

c. For SUNY and community college campuses in New York City:

1) Any vacant land or vacant building space on campus property that is located in upstate New York shall be eligible for designation as a Tax-Free NY Area.

2) Any property affiliated with Downstate Medical Center that constitutes a New York State Incubator shall be eligible for designation as a Tax-Free NY Area.

3) For SUNY and community colleges in New York City with campus property in upstate New York, up to 200,000 square feet of vacant land or building space located within one mile of a perimeter of a SUNY or community college campus property that is in upstate New York shall be eligible for designation as a Tax-Free NY Area.

i. Upon application from such SUNY or community college and in consultation with the chancellor or his or her designee, the Commissioner may qualify identified vacant land or identified vacant space in a building that is located more than one mile from its campus as eligible for purposes of this Program if the Commissioner determines that the SUNY or community college has shown that the use of the land or space will be consistent with the requirements of this Program.

4) A New York State Incubator with a bona fide affiliation with a New York City-based state university or community college shall be eligible for designation as a Tax-Free NY Area; and

5) Downstate Medical Center, Fashion Institute of Technology (FIT), Maritime College and College of Optometry are eligible to seek designation of additional Tax-Free NY space by the START-UP NY Approval Board as described in Sections 220.4(d) and 220.5(f) herein.

6) No academic programs, administrative programs, offices, housing facilities, dining facilities, athletic facilities, or any other facility, space or program that actively serves students, faculty or staff may be closed or relocated in order to create vacant land or space to be utilized for this Program.

d. For CUNY campuses:

1) Up to five CUNY campuses, one each in the boroughs of Manhattan, Brooklyn, Bronx, Queens and Staten Island, may be designated by the board of trustees of the CUNY in economically distressed communities as defined by the Commissioner.

i. Any vacant space in any building located on a designated campus shall be eligible for designation as a Tax-Free NY Area.

ii. Any vacant land on a designated campus shall be eligible for designation.

2) Any vacant land or vacant building space on property of a CUNY campus that is located in upstate New York shall be eligible for designation.

3) A New York State Incubator with a bona fide affiliation to the CUNY shall be eligible for designation as a Tax-Free NY Area.

4) CUNY campuses not otherwise designated are eligible to seek designation of Tax-Free NY space by the START-UP NY Approval Board as described in Sections 220.4(d) and 220.5 (f) herein.

5) Up to a total of 200,000 square feet of vacant land or vacant building space located within one mile of a perimeter of a CUNY campus in upstate NY shall be eligible for designation as a Tax-Free NY Area.

i. Upon application from such CUNY and in consultation with the chancellor or his or her designee, the Commissioner may qualify identified vacant land or identified vacant space in a building that is located more than one mile from its campus as eligible

for purposes of this Program if the Commissioner determines that the SUNY or community college has shown that the use of the land or space will be consistent with the requirements of this Program.

6) No academic programs, administrative programs, offices, housing facilities, dining facilities, athletic facilities, or any other facility, space or program that actively serves students, faculty or staff may be closed or relocated in order to create vacant land or space to be utilized for this Program.

e. For private colleges and universities in upstate New York:

1) Up to 2.4 million square feet of vacant space in any building or vacant land in upstate New York shall be eligible for designation as a Tax-Free NY Area.

2) A New York State Incubator with a bona fide affiliation to the private university or college shall be eligible for designation as a Tax-Free NY Area and are subject to the limitation on eligible square footage in this section.

f. For private colleges and universities in downstate New York:

1) Private colleges and universities in downstate New York are eligible—along with Downstate Medical Center, Fashion Institute of Technology (FIT), Maritime College, College of Optometry and campuses of CUNY not otherwise designated—to apply to the START-UP NY Approval Board for designation of up to 75,000 square feet of vacant campus land or space as a Tax-Free NY Area in each of the following eight counties: Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester. In any county where the allocated seventy-five thousand (75,000) square feet is designated as a Tax-Free NY Area, an additional seventy-five thousand (75,000) square feet shall be eligible for designation by the START-UP NY Approval Board as a Tax-Free NY Area.

2) A New York State Incubator with a bona fide affiliation to the private university or college shall be eligible for designation as a Tax-Free NY Area.

3) Private colleges or universities located in Nassau, Suffolk or Westchester counties are eligible to apply for designation by the START-UP NY Approval Board of certain adjacent property as Tax-Free NY Area, described in Section 220.4(d) herein.

g. For Strategic State Assets and Correctional Facilities:

1) The START-UP NY Approval Board may also approve Plans that include up to 20 Strategic State Assets affiliated with a SUNY, CUNY, or community college, or with a private college or university.

2) Each Strategic State Asset approved by the Board may include up to 200,000 square feet of vacant land or vacant building space designated as a Tax-Free NY Area and shall not count against any other square footage limitations in the Program.

3) The START-UP NY Approval Board may also approve Plans that include Correctional Facilities, as defined in Section 220.2 herein, affiliated with a SUNY, CUNY or community college, or with a private college or university.

h. For a New York State Incubator:

1) For purposes of this Part, only certain land and buildings within certified New York State Incubators with a bona fide affiliation with a sponsoring university or college shall be eligible to participate in START-UP NY.

2) In order for there to be a bona fide affiliation of a New York State Incubator with a sponsoring university or college, the Incubator and the sponsoring university or college must have a partnership to provide assistance and physical space to eligible businesses, as described in Section 16-v of the Urban Development Corporation Act.

3) In the case of a business Incubator or Hot Spot sponsored or administered by a university or college, the Incubator or Hot Spot shall document the relationship with the university or college by providing the certificate of incorporation, by-laws, memorandum of understanding or similar document detailing the relationship between the parties.

4) In the case of a business Incubator or Hot Spot that is part of a partnership with another university or college or a not-for-profit entity other than the sponsoring or administering entity, the Incubator or Hot Spot shall provide evidence of such partnership agreement through submission of a memorandum of understanding, certificate of incorporation, by-laws or similar document detailing the rights, responsibilities and expectations of the parties, including but not limited to financial commitments, shared use of staff, facilities or resources.

5) The Incubator and the sponsoring university or college must directly work together towards the goals of jointly creating jobs and incubating new startup businesses.

6) The mission and activities of the Incubator must align with or further the academic mission of the Sponsor.

220.6 Eligibility criteria for businesses.

a. For purposes of this section, only eligible businesses located on eligible land shall be eligible to participate in the START-UP NY Program.

b. The Commissioner may seek and consider any information required to assess a business's eligibility in the START-UP NY Program.

1) The following types of businesses are prohibited from participating in the START-UP NY Program:

i. Retail and wholesale businesses. Retail businesses shall include establishments engaged in retailing merchandise, generally without transformation, and rendering services incidental to the sale of merchandise. Wholesale businesses shall include

establishments engaged in wholesaling merchandise, generally without transformation, and rendering services incidental to the sale of merchandise. Merchandise includes the outputs of agriculture, mining, manufacturing, and certain information industries, such as publishing.

ii. Restaurants. Restaurants shall include establishments that prepare meals, snacks, and beverages to customer order for immediate on-premises and off-premises consumption. This includes establishments that provide food and drink only, or various combinations of seating space, waiter/waitress services and incidental amenities, such as limited entertainment.

iii. Real estate brokers. Real estate brokers shall include establishments that are engaged in renting or leasing real estate to others; selling, buying, or renting real estate for others; and providing other real estate related services, such as appraisal services.

iv. Law firms or businesses providing legal services. Law firms or businesses providing legal services shall include establishments or offices of legal practitioners known as lawyers or attorneys (i.e., counselors-at-law) primarily engaged in the practice of law. Establishments in this industry may provide expertise in a range or in specific areas of law, such as criminal law, corporate law, family and estate law, patent law, real estate law, or tax law.

v. Medical or dental practices. Medical and dental practices shall include establishments that provide health care services, directly or indirectly, to patients.

vi. Real estate management companies. Real estate management companies shall include establishments that are engaged in

managing real estate for others and providing other real estate related services, such as appraisal services.

vii. Hospitality. Hospitality-related businesses shall include establishments that provide lodging or short-term accommodations for travelers, vacationers, and others. Some provide lodging only; while others provide meals, laundry services, and recreational facilities, as well as lodging.

viii. Finance and financial services. Finance and financial services businesses shall include establishments that are primarily engaged in financial transactions, that is, transactions involving the creation, liquidation, or change in ownership of financial assets, and/or in facilitating financial transactions.

ix. Businesses providing personal services. Businesses providing personal services shall include businesses that provide personal and laundry services to individuals, households, and businesses. Services performed include: personal care services; death care services; laundry and dry cleaning services; and a wide range of other personal services, such as pet care services, photofinishing services, temporary parking services, and dating services.

x. Businesses providing business administrative or support services, unless such business has received permission from the Commissioner to apply to participate in the START-UP NY Program upon demonstration that the business would create no fewer than one hundred net new jobs in the Tax-Free NY Area. Businesses providing business administrative or support services shall include businesses that are engaged in activities that support the day-to-day operations of other organizations. These activities include general management, personnel administration, clerical activities, or cleaning activities.

xi. Accounting firms or businesses providing accounting services. Accounting firms or businesses providing accounting services shall include establishments primarily engaged in providing services, such as auditing of accounting records, designing accounting systems, preparing financial statements, developing budgets, preparing tax returns, processing payrolls, bookkeeping, and billing.

xii. Businesses providing utilities. Businesses that provide utilities shall include businesses that provide electric power, natural gas, steam supply, water supply, and sewage removal through a permanent infrastructure of lines, mains, and pipes.

xiii. Businesses engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity. Businesses engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity shall include businesses that generate or distribute electric power, natural gas, or steam supply through a permanent infrastructure of lines, mains, and pipes.

c. A business must satisfy all of the following criteria to apply to and participate in START-UP NY:

1) A business must be a new business to the State at the time it submits its application to participate in START-UP NY, except where:

i. the business successfully graduated from a New York State Incubator;

ii. the business once operated in New York but moved its operations out of New York State on or before June 1, 2013, and the Commissioner determines the business has demonstrated it will

substantially restore jobs in New York that it previously had moved out of the State or

iii. the Commissioner determined that the business has demonstrated it will create net new jobs in the Tax-Free NY Area and that it or any related persons has not eliminated any jobs in the State in connection with this expansion.

2) The business may be organized as a corporation, a partnership, a limited liability company or a sole proprietorship.

3) A business must be in compliance with all worker protection and environmental laws and regulations. In addition, a business may not owe past due federal or state taxes or local property taxes.

4) The mission and activities of the business must align with or further the academic mission of the university or college sponsoring the Tax-Free NY Area in which it seeks to locate, and the business's participation in the START-UP NY Program must have positive community and economic benefits, including but not limited to employment; opportunities for internship, vocational training and learning experiences for undergraduate and graduate study; diversification of local economy; environmental sustainability; entrepreneurship; positive, non-competitive and/or synergistic links to existing businesses; effect on the local economy; and opportunities as a magnet for economic and social growth. Business involvement with Sponsors can include, but is not limited to:

   i. Funding scholarships, facilities, or other academic services or amenities;

   ii. Offering internships, experiential learning opportunities, or full-time jobs to school graduates;

   iii. Teaching a course, offering seminars, or providing student mentoring;

   iv. Using company resources, intellectual property or expertise to support the academic mission.

5) The business must demonstrate that it will, in its first year of operation, create net new jobs.
6) The business must not be engaged in a line of business that is currently or was previously conducted by the business or a related person in the last five years in New York State, unless:
    i. the business once operated in New York but moved its operations out of New York on or before June 1, 2013, and the Commissioner determines the business has demonstrated it will substantially restore jobs in New York that it previously had moved out of the State or
    ii. the Commissioner determined that the business has demonstrated it will create net new jobs in the Tax-Free NY Area and that it or any related persons has not eliminated any jobs in the State in connection with this expansion.

d. To remain eligible for the Program, a business must satisfy the following criteria:
    1) The business must maintain, at a minimum, net new jobs created and during any year of operation, the average number of employees of the business and its related persons in the State during the year must equal or exceed the sum of (i) the average number of employees of the business and its related persons in the State during the year immediately preceding the year in which the business submits its application to locate in a Tax-Free NY Area and (ii) net new jobs of the business in the Tax-Free NY Area during the year. The average number of employees of the business and its related persons in the State in a year is determined by taking the average number of total employees of the business and its related persons in the State on March 31, June 30, September 30 and December 31 of that year.
    2) A business must submit an annual report to the Commissioner as described in Section 220.16 herein;

e. In addition to the other requirements of this Section, in order to be eligible to participate in the START-UP NY Program in downstate New York, a business must be:
    1) in the formative stage of development; or
    2) engaged in the design, development, and introduction of new biotechnology, information technology, remanufacturing, advanced materials, processing, engineering or electronic technology products and/or innovative manufacturing processes, and meet such other requirements for a high-tech business as the Commissioner shall develop.

f. In addition to the other requirements of this Section, in order to be eligible to participate in the START-UP NY Program, any business that has successfully completed residency in a New York State Incubator pursuant to Section 16-v of the Urban Development Corporation Act may apply to participate in the START-UP NY Program provided that such business locates in a Tax-Free NY Area, even where that business is not a new business. A business that has successfully completed residency in a New York State Incubator pursuant to Section 16-v of the Urban Development Corporation Act and resides in an approved Tax-Free NY Area may apply to participate in the START-UP NY Program if the business demonstrates it will create net new jobs in that Tax-Free NY Area.

220.7 Application process for eligible state university campuses, community colleges and city university campuses for approval as a Tax-Free NY Area.

a. In order to become a Sponsor, an eligible SUNY, CUNY or community college must submit a Plan for approval to the Commissioner containing, among other things:
    1) Specification or identification of space or land proposed for designation as a Tax-Free NY Area identifying the following:
        i. Name and address of the SUNY, CUNY or community college seeking approval as a Sponsor, the address of the space or land proposed for designation as a Tax-Free NY Area, and a written

description of the physical characteristics of the area for designation;

ii. Digital files containing data, such as a Polygon shapefile or other format approved by the Commissioner, that delineates the area proposed for designation;

iii. Digital files containing data, such as a Point shapefile or other format approved by the Commissioner, that provides locations of the area proposed for designation. Such files must include a unique identifier for each feature;

iv. Digital files containing a chart that includes name of city, town or village where the area proposed for designation is located; street address; zip code; name of property owner; type of property; parcel identification number (if applicable and available); vacant Building name/number; type of vacant space; total square footage of area for designation; unique identifier; and any geographic information system (GIS) maps or other format approved by the Commissioner , as indicated on the application form, of the area comprising the proposed Tax-Free NY Area, showing existing streets, highways, waterways, natural boundaries and other physical features.

2) The total square footage of the space or acreage of land proposed for designation as a Tax-Free NY Area;
3) Description of the type of business or businesses that may locate on the area to be designated;
4) Description of the academic mission of the Sponsor and how the anticipated businesses will align or further the academic mission of the university or college;
5) Description of how participation by those types of businesses in the Program would generate positive community and economic benefits, including but not limited to:

i. Increased employment opportunities

ii. Increased opportunities for internships, vocational training and experiential learning for undergraduate and graduate study

iii. Diversification of the local economy

iv. Environmental sustainability

v. Increased entrepreneurship opportunities

vi. Positive, non-competitive and/or synergistic links to existing businesses

vii. Effect on the local economy

viii. Opportunities as a magnet for economic and social growth

6) Description of the process the Sponsor will follow to select participating businesses;

7) Copy of the university or college Conflict of Interest guidelines, as required by Section 220.20 herein;

8) Attestation that the proposed Tax-Free NY Area has not been financed with any tax-exempt bonds, or where the proposed Tax-Free NY Area has been financed with any tax-exempt bonds, a formal opinion from counsel with expertise and experience in bond tax matters, or other documentation deemed acceptable by the Commissioner, that designation of the Tax-Free NY Area will not jeopardize or conflict with any existing tax-exempt bonds used to finance any property of the Sponsor;

9) Certification that the Sponsor has not relocated or eliminated any academic programs, any administrative programs, offices, housing facilities, dining facilities, athletic facilities, or any other facility, space or program that actively serves students, faculty or staff in order to create vacant land or space to be designated as a Tax-Free NY Area; and

10) Certification that the information contained in such Plan is accurate and complete.

b. At least 30 days before submitting the Plan to the Commissioner, a SUNY, CUNY or community college must provide a copy of the Plan to the chief executive officer of the

municipality or municipalities in which the proposed Tax-Free NY Area is located, a local economic development entity representing the area in which the proposed Tax-Free NY Area is located, the applicable university or college faculty senate, union representatives and the campus student government. The SUNY, CUNY or community college shall include in the Plan to the Commissioner certification of such notification, as well as a copy of any written responses, received prior to submission of the Plan to the Commissioner, from the parties to which the Plan was submitted.

c. If the Plan includes land or space located outside of the campus, the SUNY, CUNY or community college must consult with the chief executive officer of the municipality or municipalities in which such land or space is located prior to including such space or land in its proposed Tax-Free NY Area and shall give preference to underutilized properties. The SUNY, CUNY or community college shall include in the Plan to the Commissioner certification of such consultation, as well as a copy of any written responses or comments received from the municipality or municipalities that were consulted.

d. As part of the evaluation, the Commissioner will consult with the chancellor of the applicable SUNY, CUNY or community college, or his or her designee, regarding the Plan. The consultation can occur in writing or in person, in a form and manner to be determined by the Commissioner. The Commissioner shall have the right to reject, in his or her sole discretion, any application that he or she determines is incomplete, without making any determination to approve or disapprove the application. In such circumstances, the Commissioner shall advise the chancellor of the applicable SUNY, CUNY or community college, or his or her designee, that the application has been rejected as incomplete.

e. For all Plans where the land or vacant space sought for approval as a Tax-Free NY Area is submitted pursuant to the eligibility requirements of Section 432(1) of the EDL, the Commissioner, upon receipt of a complete application from an eligible SUNY, CUNY or community college, shall determine whether that university or college meets the eligibility criteria set forth in Section 220.5 herein. A university or college that does not

meet the criteria set forth in Section 220.5 herein shall not be accepted into the Program. Having determined that an application is complete and that the SUNY, CUNY or community college meets the eligibility criteria set forth in Section 220.5 herein, the Commissioner may accept the SUNY, CUNY or community college as a Sponsor.

f. For all Plans where the land or vacant space sought for approval as a Tax-Free NY Area is submitted pursuant to the eligibility requirements of Section 432(2) of the EDL, the Commissioner, upon receipt of a complete application from an eligible SUNY, CUNY or community college, shall determine whether that university or college meets the eligibility criteria set forth in Section 220.5 herein. A university or college that does not meet the criteria set forth in Section 220.5 herein shall not be accepted into the Program. Having determined that an application is complete and that the university or college meets the eligibility criteria set forth in Section 220.5 herein, the Commissioner will forward the Plan to the START-UP NY Approval Board. The Board will examine the merits of each proposal, including but not limited to, compliance with the eligibility criteria set forth in Section 220.5 herein, reasonableness of the economic and fiscal assumptions contained in the application and in any supporting documentation and the potential of the proposed Plan to create new jobs. The Board will also give preference to plans that include underutilized properties within their proposed Tax-Free NY Areas. The Board will prioritize for acceptance Plans for Tax-Free NY Areas in counties that contain a city with a population of one hundred thousand or more without a university center as of June 20, 2013, and shall approve applications in a manner that ensures regional balance and balance among eligible rural, urban and suburban areas in the State. The Board by a majority vote shall approve or reject each Plan forwarded to it by the Commissioner.

g. The Sponsor will be notified in writing that the proposed available land or vacant space has been approved as a Tax-Free NY Area and will be advised that the Sponsor may solicit businesses immediately to locate into the approved Tax-Free NY Area and apply to participate in the Program. The Commissioner will also publicly post information about approved Tax-Free NY Areas on the Department's website and encourage eligible

businesses to locate into the approved Tax-Free NY Area and apply to participate in the Program.

h. The Commissioner shall have authorization to enter onto any land or space identified on any Plan for approval as a Tax-Free NY Area, as well as to have access to any information, documents, or records submitted in support of any Plan, for the purposes of inspection, auditing and copying. Nothing herein shall diminish, or in any way adversely affect, New York State's right to discovery in any pending or future litigation, or the ability of the Department of Taxation and Finance or the Department of Labor to conduct any independent audit or review.

220.8 Application process for eligible private university or college campuses for approval as a Tax-Free NY Area.

a. In order to become a Sponsor, an eligible private university or college campus must submit a Plan for approval to the Commissioner containing, among other things:

1) Specification or identification of the space or land proposed for designation as a Tax-Free NY Area identifying the following:

i. Name and address of the university or college campus seeking approval as a Sponsor, the address of the space or land proposed for designation, and a written description of the physical characteristics of the area for designation;

ii. Digital files containing data, such as a Polygon shapefile or other format approved by the Commissioner, that delineates the area proposed for designation;

iii. Digital files containing data, such as a Point shapefile or other format approved by the Commissioner, that provides locations of the area proposed for designation. Such files must include a unique identifier for each feature;

iv. Digital files containing a chart that includes name of city, town or village where the area proposed for designation is located; street address; zip code; name of property owner; type of property; parcel identification

number (if applicable and available); vacant Building name/number; type of vacant space; total square footage of area for designation; unique identifier; and any geographic information system (GIS) maps or other format approved by the Commissioner , as indicated on the application form, of the area comprising the proposed Tax-Free NY Area, showing existing streets, highways, waterways, natural boundaries and other physical features.

2) The total square footage of the space or land proposed for designation as a Tax-Free NY Area.
3) Description of the type of business or businesses that may locate on that space or land;
4) Description of the academic mission of the Sponsor and how the anticipated businesses will align or further the academic mission of the university or college;
5) Description of how participation by those types of businesses in the Program would generate positive community and economic benefits, including but not limited to:
    i. Increased employment opportunities
    ii. Increased opportunities for internships, vocational training and experiential learning for undergraduate and graduate study
    iii. Diversification of the local economy
    iv. Environmental sustainability
    v. Increased entrepreneurship opportunities
    vi. Positive, non-competitive and/or synergistic links to existing businesses
    vii. Effect on the local economy
    viii. Opportunities as a magnet for economic and social growth
6) Description of the process the Sponsor will follow to solicit businesses to locate in Tax-Free NY Area and apply to participate in the START-UP NY Program;

7) Copy of the university or college Conflict of Interest guidelines, as required by Section 220.20 herein;
8) Attestation that the proposed Tax-Free NY Area has not been financed with any tax-exempt bonds, or where any portion of the proposed Tax-Free NY Area has been financed with any tax-exempt bonds, a formal opinion from counsel with expertise and experience in bond tax matters, or other documentation deemed acceptable by the Commissioner, that designation of the Tax-Free NY Area will not jeopardize or conflict with any existing tax-exempt bonds used to finance any property of the Sponsor;
9) Certification that the information contained in such Plan is accurate and complete;

b. If the Plan includes any land or space located outside of the university or college campus, the university or college must consult with the chief executive officer of the municipality or municipalities and notify a local economic development entity representing the area in which the proposed Tax-Free NY Area is located prior to including such space or land in its proposed Tax-Free NY Area at least 30 days prior to submitting the Plan to the Commissioner. The university or college shall include in the Plan to the Commissioner certification of such consultation and notification, as well as a copy of any written responses or comments, received prior to submission of the Plan to the Commissioner, from the parties with which the university or college consulted or to which the Plan was submitted.

c. The Commissioner shall have the right to reject, in his or her sole discretion, any application that he or she determines is incomplete, without making any determination to approve or disapprove the application. In such circumstances, the Commissioner shall advise the university or college that the application has been rejected as incomplete.

d. Having determined that an application is complete and that the university or college meets the eligibility criteria set forth in Section 220.5 herein, the Commissioner will forward the Plan to the START-UP NY Approval Board. The Board will examine the

merits of each proposal, including but not limited to, compliance with the eligibility criteria set forth in Section 220.5 herein, reasonableness of the economic and fiscal assumptions contained in the application and in any supporting documentation and the potential of the proposed Plan to create new jobs. The Board will also give preference to plans that include underutilized properties within their proposed Tax-Free NY Areas. The Board will prioritize for acceptance Plans for Tax-Free NY Areas in counties that contain a city with a population of one hundred thousand or more without a university center as of June 20, 2013, and shall approve applications in a manner that ensures regional balance and balance among eligible rural, urban and suburban areas in the State. The Board by a majority vote shall approve or reject each Plan forwarded to it by the Commissioner.

e. The Sponsor will be notified in writing that the proposed available land or vacant space has been approved as a Tax-Free NY Area and will be advised that the Sponsor may solicit businesses immediately to locate into the approved Tax-Free NY Area and apply to participate in the START-UP NY Program. The Commissioner will also publicly post information about approved Tax-Free NY Areas on the Department's website and encourage eligible businesses to locate into the approved Tax-Free NY Area and apply to participate in the START-UP NY Program.

f. Plans shall be accepted by the START-UP NY Approval Board throughout the year and shall be due at least 21 days before any Board meetings for consideration at that meeting. Notwithstanding the provisions in this Section, the START-UP NY Approval Board shall, in its discretion, review completed Plans submitted pursuant to this Section on a rolling basis.

g. The Commissioner shall have authorization to enter onto any land or space identified on any Plan for approval as a Tax-Free NY Area, as well as to have access to any information, documents, or records submitted in support of any Plan, for the purposes of inspection, auditing and copying. Nothing herein shall diminish, or in any way adversely affect, New York State's right to discovery in any pending or future litigation,

or the ability of the Department of Taxation and Finance or the Department of Labor to conduct any independent audit or review.

220.9 Procedures for amending approved Plans seeking designation of Tax-Free NY Areas. This section applies to any amendments to Plans seeking designation of Tax-Free NY Areas that have been approved by the Commissioner or the START-UP NY Approval Board.

a. A Sponsor may seek to amend or modify the approved Plan at any time. Amendments or modifications shall be submitted in the same manner as the original Plan. The amendment must be submitted for approval pursuant to the procedures and requirements set forth in Sections 220.7 or 220.8 herein, whichever is applicable.
b. Where a business has located and been approved to participate in the START-UP NY Program, amendments or modifications to the Sponsor's Plan may not violate the terms of any lease with such business in the approved Tax-Free NY Area.
c. Where a business that has located and been approved to participate in the START-UP NY Program is terminated from the Program because it no longer meets the eligibility requirements of the Program, and the business chooses not to relocate from the approved Tax-Free NY Area, and the business does not have a lease with the Sponsor, the Sponsor may seek to amend or modify the Plan to allocate an amount of vacant land or space equal to the amount of space occupied by the terminated business.
d. Any amendments or modifications must be approved pursuant to the procedures and requirements set forth in Sections 220.7 or 220.8 herein, whichever is applicable.

220.10 Businesses locating in Tax-Free NY Areas.

a. To participate in START-UP NY, an eligible business must submit a complete application, as prescribed by the Commissioner, on or before December 31, 2020.
b. For purposes of encouraging eligible businesses to locate in a Tax-Free NY Area and participate in the Program, Sponsors are permitted to solicit and accept application from eligible businesses pursuant to the provisions of this Part and Article 21 of the EDL.

c. A Sponsor shall not accept any application to locate in a Tax-Free NY Area from a business that would compete with other businesses in the same Community but outside the Tax-Free NY Area.

d. As part of such application, a business applicant must:

1) Agree to allow the Department of Taxation and Finance to share its tax information with the Department. The form created by the Department to effectuate this information transfer shall be executed only by a person with authority to act on the business entity's behalf in this regard. Any tax information shared as a result of this agreement shall be exempt from disclosure or inspection in accordance with the Freedom of Information Law, Article 6 of the Public Officers Law;

2) Agree to allow the Department of Labor to share its tax and employer information with the Department. The form created by the Department to effectuate this information transfer shall be executed only by a person with authority to act on the business entity's behalf in this regard. Any tax and employment information shared as a result of this agreement shall be exempt from disclosure or inspection in accordance with the Freedom of Information Law, Article 6 of the Public Officers Law;

3) Allow the Department and its agents access to any and all books and records deemed relevant by the Department to monitor compliance with the requirements of the Program;

4) Provide, upon request by the Department, all of the following information:

i. the name, address, and employer identification number of the business;

ii. identification of any parent, subsidiary and affiliated businesses, if any;

iii. a description of the nature of the business, i.e. identification of any goods produced or manufactured, or services to be rendered;

iv. a description of the land or space the business will use, the terms of the lease agreement, if applicable, between the Sponsor and the business, and whether or not the land or space being used by the business is being transferred or sublet to the business from some other business;

v. description of any investment to be made in the Tax-Free NY Area including, but not limited to, any plans for construction, rehabilitation or renovation; purchase or lease of equipment; estimated costs of investments; estimated schedule for the completion of any investment;

vi. description of how the business plans to recruit employees from the local workforce;

vii. certification by the business that it meets the eligibility criteria pursuant to this Part and Article 21 of the EDL and will align with or further the academic mission of the Sponsor;

viii. certification of efforts to ascertain that, at the time of application, the business would not compete with any other business in the same Community but outside the Tax-Free NY Area, which certification shall include:

a. An attestation by the Sponsor that a review of 6-digit NAICS codes of businesses in the same Community identifies no businesses in the same Community with the same NAICS code.

b. An affidavit of publication obtained by the Sponsor from a daily print or online newspaper in the county where the applicable Tax-Free NY Area is located that affirms that a notice regarding the application was published in such newspaper for no less than five (5) consecutive days and an attestation by the Sponsor that the published notice yielded no responses from businesses identifying themselves as

Competitors in the same Community. Such notice shall include a detailed description of the applicant's proposed products or services and shall also include appropriate contact information for the university or college representative responsible for receiving START-UP NY business applications and all other information as determined by the Commissioner.

c. An attestation by the applicant that it does not compete with other businesses in the same Community but outside the Tax-Free NY Area.

d. In the event that a potential Competitor is identified, the Sponsor must seek a letter from the Commissioner determining whether the applicant business would compete with other businesses in the same Community but outside the Tax-Free NY Area. In such case, the Commissioner shall conduct a review of available information and make a final determination as to whether the applicant has a Competitor in the same Community. Such review shall include, but not be limited to, a comparison of the products and/or services proposed to be provided by the business applicant and the products and/or services provided by the potential Competitor or Competitors. The Commissioner will make the final determination about whether the business applicant will compete with other existing businesses in the same Community but outside the Tax-Free NY Area.

ix. certification that the business's participation in the START-UP NY Program will have positive community and economic benefits;

x. the prior three years of federal and state income or franchise tax returns, unemployment insurance quarterly returns, real property tax bills and audited financial statements;

xi. the employer identification or social security numbers for all related persons to the business, including those of any members of a limited liability company or partners in a partnership;

xii. a list and description of all related persons to the business and certification that jobs are not being shifted within the State;

xiii. certification, under penalty of perjury, that the applicant is in substantial compliance with all environmental, worker protection, and local, state and federal tax laws;

xiv. whether the business has previously applied for acceptance to locate into a Tax-Free NY Area and the status of that application.

5) Include a statement of performance benchmarks, identifying the number of net new jobs that must be created, the schedule forecasting a five-year plan or projection for creating those jobs, and details on job titles and expected salaries. This statement of performance benchmarks must also indicate the maximum number of net new jobs eligible for the personal income tax benefit described in Section 39(e) of the Tax Law to be created.

6) Include a statement of consequences for the failure to meet performance benchmarks, as determined by the business applicant and the Sponsor, which shall include one or more of the following: (i) suspension of such business's participation in the START-UP NY Program for one or more tax years as specified in such application; (ii) termination of such business's participation in the START-UP NY Program; or (iii) proportional recovery of tax benefits awarded under the START-UP NY Program as specified in Section 39 of the Tax Law.

i. In the event that the business chooses proportional recovery of tax benefits as a consequence of realizing job creation less than the estimated amount, and the number of net new jobs created is at least 75% of the number of net new jobs promised, then the tax benefits shall be reduced by the percentage by which the business failed to meet its performance benchmark, calculated as the ratio of

the difference between new net jobs promised and actual net new jobs created divided by the net new jobs promised. For purposes of example, if the business promised to create 100 net new jobs but created only 90 net new jobs, the difference is 10 net new jobs. Dividing those 10 jobs not created by the 100 jobs promised shows that the number of jobs created is 10% less than the number of jobs promised. The business's tax benefits would therefore be reduced by 10%.

ii. In the event that the business chooses proportional recovery of tax benefits as a consequence of realizing job creation less than the estimated amount, and the number of net new jobs created is less than 75% of the number of net new jobs promised in any three years during the 10-year job creation schedule, then:

a. in the first year that the business does not meet the 75% threshold, there shall be a proportional recovery of tax benefits;

b. in the second year that the business does not meet the 75% threshold, such business's participation in the START-UP NY Program will be suspended; and

c. in the third year that the business does not meet the 75% threshold, such business's participation in the START-UP NY Program may be terminated.

7) In accordance with Section 89(5) of the Public Officers Law, identify with specificity any information in the application that the applicant deems to be a trade secret or otherwise exempt from disclosure under the Freedom of Information Law, Article 6 of the Public Officers Law.

e. The Sponsor, upon receipt of a complete application from a business applicant, shall determine whether the business applicant meets the eligibility criteria set forth in Section 220.6 herein. An application that meets the eligibility criteria set forth in

Section 220.6 herein may then be forwarded by the Sponsor to the Commissioner for further review to determine whether the business meets all of the requirements, as well as the intended purpose, of Article 21 of the EDL.

1) Where the Sponsor is a SUNY college or university and proposes to enter into a lease with a term greater than 40 years (including any options to renew) with the business applicant for eligible land in a Tax-Free NY Area or for eligible land in a Tax-Free NY Area of one million or more square feet, the Sponsor must also submit a copy of the proposed lease to the START-UP NY Approval Board at the same time the application is provided to the Commissioner. If the Board disapproves of the lease, it must provide to the Sponsor a statement of reason for disapproval and suggestions for modifications within 30 days of receipt. The Sponsor may then submit a modified lease in accordance with the Board's suggestions to the Commissioner for review as part of the business application. If the Board does not disapprove of the lease within 30 days of receipt, it shall be deemed approved by the Board and the application shall be deemed ready for review by the Commissioner.

f. When forwarding a completed business application to the Commissioner, the Sponsor must include a certification that it will adhere to any and all applicable requirements under Article 21 of the EDL, Article 8 of the Labor Law and Article 15-A of the Executive Law.

g. An applicant that does not meet the criteria set forth in Section 220.6 herein shall not be approved to locate to a Tax-Free NY Area or be accepted into the Program.

h. The Commissioner, upon receipt of a complete application from a Sponsor, shall conduct a further review to determine whether the business meets all of the requirements, as well as the intended purpose, of Article 21 of the EDL. The Commissioner shall consider, among other things, whether the applicant:

1) Meets all of the eligibility criteria set forth in Section 220.6 herein;
2) Has submitted a complete application;
3) Has complied with the application requirements of this Section; and

4) Demonstrated that the business's participation in the START-UP NY Program will have positive community and economic benefits.

i. The Commissioner may reject the application upon a determination that the applicant does not meet the eligibility criteria set forth in Section 220.6 herein or any other requirement, as well as the intended purpose, of Article 21 of the EDL.

j. If the Commissioner rejects the application, he or she shall provide written notice of such rejection to the Sponsor.

k. The Commissioner may approve the application anytime after receipt; if the Commissioner approves the application, the business applicant is deemed accepted into the START-UP NY Program and can locate to the Sponsor's Tax-Free NY Area. If the Commissioner does not reject the application within 60 days of receipt, the business applicant is deemed accepted into the START-UP NY Program and can locate to the Sponsor's Tax-Free NY Area. The Commissioner's 60-day review period is suspended pending any review or modification of any proposed lease, if any, between a SUNY Sponsor and an applicant. The application of the business shall constitute the contract between the business and Sponsor. The Sponsor must provide an accepted business with documentation of its acceptance in such form as prescribed by the Commissioner of Taxation and Finance, which will be used to demonstrate such business's eligibility for the tax benefits specified in Section 39 of the Tax Law.

l. Where the Commissioner determines that the number of net new jobs eligible for the personal income tax benefit under Section 39(e) of the Tax Law will exceed the allowable total aggregate net new jobs in the year in which the application is accepted, the business will be given priority in the subsequent year and all net new jobs identified in the business application's performance benchmarks will be eligible for the personal income tax benefit the following year.

m. At the conclusion of the lease term between the Sponsor and the business for land or space in a Tax-Free NY Area owned by the Sponsor, if applicable, the leased land or space and any improvements thereon shall revert to the Sponsor, unless the lease is renewed.

220.11 Amendments to a business's application for acceptance into the Program.

This Section applies to any amendments made to the original application following approval of the business applicant into the Program pursuant to Section 220.10 herein.

a. Following approval and acceptance into the Program, a business may amend any part of its application at any time to reflect any changes, so long as the amendments are made in the same manner as the application for participation in the Program. A business may amend its schedule of job creation in the same manner that it applied for participation in the Program, and any increase in eligibility for personal income tax benefits on behalf of additional net new jobs shall be subject to the limitations of Section 220.6 herein.
b. If the original application included a lease between the business applicant and a SUNY college or university, any amendments to the application may not violate the terms of such lease or provide for any contradictory terms.

220.12 Re-application process for businesses rejected from the Program.

This Section applies to re-applications made as a result of an applicant being rejected from the Program for failing to meet the requirements of Section 220.6 herein or any other requirement, as well as the intended purpose, of Article 21 of the EDL, pursuant to Section 220.10 herein.

a. With Sponsor approval, an applicant that has been rejected from the Program may choose to locate into a Tax-Free NY Area but will not be eligible for any of the benefits associated with the Program.
b. An applicant that has been disapproved or rejected from the START-UP NY Program may submit a re-application to the Commissioner by submitting, in writing within 60 days of receipt of written rejection, a request for re-application. The request must identify the basis for the disapproval or rejection, as well as specific factual information (along with documentation establishing that information) and any arguments in support of the re-application. Failure by a business to request re-application within the aforementioned 60-day period will be deemed a waiver of the applicant's ability to submit a re-application.

c. The Commissioner may review all arguments contained in the re-application, all information in the original submissions, as well as any information independently obtained. Nothing herein precludes the Commissioner from obtaining information from any outside source, as deemed appropriate. The Commissioner may request additional information from the applicant in support of the re-application. At the Commissioner's sole discretion, the Commissioner may conduct an in-person interview with any person who has information regarding the application. The level of formality of any interview shall be at the discretion of the Commissioner.
d. The Commissioner shall notify the Sponsor, within 60 days of receipt of an applicant's complete re-application, of the Commissioner's approval or disapproval of the re-application. A disapproval of a re-application will be deemed final and non-appealable.

220.13 Auditing process.

The Department, the Department of Taxation and Finance, and the Department of Labor shall have access to all information, records, and documents of a business located in a Tax-Free NY Area and participating in the START-UP NY Program. Such access shall be provided during normal business hours at an office of the business within the State of New York for the purposes of inspection, auditing and copying. The aforementioned agencies shall take reasonable steps to protect from public disclosure any records that are exempt from disclosure under Section 87 of the Public Officers Law, provided that the business, in accordance with Section 89(5) of the Public Officers Law, identifies the records or portions of records that should be excepted from disclosure and states the reasons for such exception. Nothing herein shall diminish an agency's rights or obligations under the Freedom of Information Law, or in any way adversely affect New York State's right to discovery in any pending or future litigation.

220.14 Removal of business from the Program.

a. A business that violates any New York State laws, including but not limited to tax, labor and civil rights laws, or is found to have materially misrepresented facts in its application

for participation in the Program, or moves out of a Tax-Free NY Area will be subject to immediate termination from the Program.

b. If the Sponsor determines that a business no longer satisfies any of the eligibility criteria set forth in Section 220.6 herein or any other requirement, as well as the intended purpose, of Article 21 of the EDL, the Sponsor may recommend to the Commissioner that the business be immediately removed from participation in the Program.

c. The Commissioner shall remove any business from the Program for failing to meet any of the eligibility criteria set forth in Section 220.6 herein or any other requirement, as well as the intended purpose, of Article 21 of the EDL.

d. If the Commissioner has removed the business from the Program, the Commissioner shall notify the Sponsor and the business of such removal in writing. Such notice of removal shall explain the reason or reasons for the removal from the Program. The notice of removal shall state the effective date of removal, and advise the business that it may appeal the removal in accordance with Section 220.15 herein. Such notice may be served by the Department on the business by certified, registered or overnight mail sent to the business at the address last provided to the Department by the business and shall be deemed served three business days after being sent.

e. A copy of the notice of removal shall be sent to the Commissioner of Taxation and Finance within 30 days following a final appeal determination or waiver of appeal.

f. Upon such removal, such business shall not be eligible for the tax benefits described under Section 39 of the Tax Law for that or any future taxable year, calendar quarter or sales tax quarter, although an employee of such business may continue to claim the tax benefit for their wages during the remainder of that employee's taxable year.

g. Any lease or contract between a Sponsor and a business removed from the Program shall be rescinded, effective on the 30th day after the Commissioner serves a removal notice on such business, and the land or space and any improvements thereon shall revert to the Sponsor.

220.15 Appeal procedures for businesses upon removal from the Program.

This Section applies to appeals taken as a result of a business being removed from the Program pursuant to Section 220.14 herein.

a. The Commissioner may designate any impartial person or persons to act as an appeal officer. Such persons may not include a member of the START-UP Approval Board or anyone with a real or perceived conflict of interest.

b. Notice of Appeal

    1) A business that received a removal notice pursuant to Section 220.14 herein may send a written notice of appeal to the Commissioner appealing the removal by no later than 30 days from the date of service of the removal notice. Failure by a business to appeal the Commissioner's denial or removal of certification within the 30-day period will be deemed a waiver of the business's right to an appeal.

    2) The notice of appeal must contain specific factual information (along with documentation establishing that information), and all legal arguments that are the basis for the business's challenge to the removal.

    3) A notice of appeal must be sent to the Commissioner at the address indicated in the removal notice.

    4) Counsel to the Department may file a response to the notice of appeal with the appeal officer. Any response should address the factual and legal allegations contained in the notice of appeal. A copy of the response shall be sent to the business, or to the attorney representing the business.

c. Authority of Appeal Officer

    1) The appeal officer shall evaluate the merits of the appeal and any response from counsel to the Department. Where the appeal officer deems it appropriate, the appeal officer may require the business or counsel to the Department to address additional issues or submit additional information regarding the appeal.

    2) Nothing herein shall preclude the appeal officer from obtaining information from any outside source, as he or she deems appropriate.

3) The appeal officer shall determine whether he or she deems it necessary to conduct a fact-finding hearing, and the level of formality of any hearing conducted.

d. Appeal Officer's Report

The appeal officer shall prepare a report and make recommendations to the Commissioner. The recommendations may be in the form of a proposed decision which will contain findings of fact and conclusions of law. This report, along with the entire record, shall be transmitted to the Commissioner, counsel to the Department, and the business entity that filed the appeal.

e. Appeal Decision

After receipt of the appeal officer's report, the Commissioner shall issue a final decision and serve a copy on the business or its representative. If the Commissioner issues a final decision that includes findings of fact or conclusions of law that conflict with the recommendations of the appeal officer, the decision shall set forth the reasons therefor.

220.16 Disclosure authorization, annual verification and required reporting.

a. By submitting an application for participation in the Program, the business authorizes the Commissioner to disclose publicly the name and address of the business to be located within a Tax-Free NY Area, as well as any other information contained in such business' application, including the projected number of net new jobs to be created.

b. Each business must submit an annual performance and verification report, in such form as the Commissioner may require within 30 days at the end of its taxable year, identifying, among other things:

1) Certification of continued eligibility in the Program;
2) The number of net new jobs created;
3) The number of net new jobs maintained from the previous calendar year;
4) Wages paid during the year to its employees employed in the net new jobs created in the Tax-Free NY Area.

c. The Commissioner may disclose the annual performance and verification reports publicly and include it in any the reports required of the Commissioner by Article 21 of the EDL.

d. The Commissioner shall prepare on an annual basis a Program report for posting on the Department's website. The first report will be due on December 31, 2014 and on December 31 every year thereafter. Such report shall include, but not be limited to, the following information: the names and location of Sponsors and Tax-Free NY Areas; the number of business applicants; the number of businesses approved; the names of approved businesses; the total amount of benefit certified; the benefits received per business; the total number of net new jobs created; the number of net new jobs created per business; and such other information that the Commissioner deems necessary or useful.

e. The Commissioner shall prepare an annual report to the Governor and the Legislature. Such report shall include the number of business applicants, the number of businesses approved, the names and addresses of the businesses located within a Tax-Free NY Area, the total amount of benefits distributed, the benefits received per business, the number of net new jobs created, the net new jobs created per business, the new investment per business, the types of industries represented, and such other information that the Commissioner deems necessary or useful to evaluate the progress of the Program.

f. On or before December 31, 2020, the Commissioner shall prepare an evaluation of the effectiveness of the Program and deliver it to the Governor and the Legislature to determine continued eligibility for application submissions.

220.17 Freedom of Information Law and disclosure.

a. The Commissioner, to the extent practicable and legally permissible, may disclose publicly the names and addresses of the businesses receiving any of the tax benefits specified in this section. In addition, the Commissioner may disclose publicly the amounts of such benefits allowed to each such business, and whether or not a business created or maintained net new jobs during the taxable year.

b. The Commissioner, to the extent practicable and legally permissible, may publicly disclose the aggregate amounts of such tax exemption allowed to employees. In addition, the Commissioner may publicly disclose the number of net new jobs any business reports on its tax return or report or any other information necessary for the Commissioner or the Sponsor to monitor and enforce compliance with the law, rules and regulations governing the Program.

c. Notwithstanding any provision to the contrary, the Commissioner of Taxation and Finance, in determining whether a business or any of its owners is entitled to the tax benefits under the Program, may utilize and if necessary, disclose to the Commissioner, information derived from the tax returns of such business or related persons of such business and wage reporting information relating to any employees of such business or its related persons.

d. Freedom of Information Law disclosure waiver

    1) Except to the extent required by any law, regulation, judicial or administrative process, including, but not limited to the Freedom of Information Law, Article 6 of the Public Officers Law, proprietary information or supporting documentation submitted by a business to a Sponsor shall be utilized only for the purpose of evaluating such business's application or compliance with the provisions of Article 21 of the EDL and shall not be otherwise disclosed.

    2) Any person who willfully discloses such information to a third party for any other purpose whatsoever shall be guilty of a misdemeanor except if:

        i. such person is required or authorized to disclose such information pursuant to any law, regulation, judicial or administrative process including the Freedom of Information Law;

        ii. such information otherwise becomes publicly available through no fault of such person;

        iii. such information becomes available on a non-confidential basis from a source other than the business;

iv. such information is known prior to its receipt from the business or without any obligations of confidentiality with respect thereto; or

v. such information is developed independently of any disclosure made by the business of any proprietary information.

220.18 Record retention.

a. Each business located in a Tax-Free NY Area and receiving tax benefits through the Program shall keep all relevant records for the duration of Program participation plus three years.

b. The Department shall have the right to inspect all relevant records upon reasonable notice to the Sponsor or business.

220.19 Penalties for fraud in the Program.

If the Commissioner determines that any business located in a Tax-Free NY Area and participating in the Program has acted fraudulently in connection with its participation in such Program, such business:

a. shall be immediately terminated from the Program;

b. shall be subject to applicable criminal penalties, including but not limited to the felony crime of offering a false instrument for filing in the first degree pursuant to Section 175.35 of the Penal Law; and

c. shall be required in that year to add back to tax the total value of the tax benefits described in Section 39 of the Tax Law that such business has received and that the employees of such business have received up to the date of such finding. The amount required to be added back shall be reported on such business's corporate franchise report if such business is taxed as a corporation or on the corporate franchise tax reports or personal income tax returns of the owners of such business if such business is taxed as a sole proprietorship, partnership or New York S corporation.

220.20 Conflict of interest guidelines.

a. Each university or college participating in the START-UP NY Program shall adopt a conflict of interest policy. Such conflict of interest policy shall provide, as it relates to the Program:

   1) as a general principle, that service as an official of the university or college shall not be used as a means for private benefit or inurement for the official, a relative thereof, or any entity in which the official, or relative thereof, has a business interest;

   2) no official who is a vendor or employee of a vendor of goods or services to the university or college, or who has a business interest in such vendor, or whose relative has a business interest in such vendor, shall vote on, or participate in the administration by the university or college, as the case may be, of any transaction with such vendor; and

   3) upon becoming aware of an actual or potential conflict of interest, an official shall advise the president or chief executive officer of the university or college, as the case may be, of his or her or a relative's business interest in any such existing or proposed vendor with the university or college.

b. Each university or college shall maintain a written record of all disclosures of actual or potential conflicts of interest made pursuant to this section, and shall report such disclosures, on a calendar year basis, by January 31st of each year, to the auditor for such university or college. The auditor shall forward such reports to the Commissioner, who shall make public such reports.

c. For purposes of such conflict of interest policies:

   1) an official of a university or college has a "business interest" in an entity if the individual:

      i. owns or controls 10% or more of the stock of the entity (or 1% in the case of an entity the stock of which is regularly traded on an established securities exchange); or

      ii. serves as an officer, director or partner of the entity;

2) a "relative" of an official of a university or college shall mean any person living in the same household as the individual and any person who is a direct descendant of that individual's grandparents or the spouse of such descendant; and
3) an "official" of a university or college shall mean an employee at the level of dean and above as well as any other employee with decision-making authority over the START-UP NY Program.