

PART 170 OF THE REGULATIONS OF THE COMMISSIONER OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT ARE AMENDED TO READ AS FOLLOWS:

EMPIRE STATE FILM PRODUCTION TAX CREDIT PROGRAM

Subdivisions (a) and (b) of section 170.2 are hereby amended, new subdivisions (i)-(k) are added, existing subdivisions (i)-(ah) are renumbered (l)-(ak) and amended as follows:

§ 170.2 Definitions. As used in this regulation, the following terms shall have the following meanings:

- (a) “Authorized applicant” means a qualified film production company that is scheduled to begin principal and ongoing photography on a qualified film after submitting a complete initial application to the Department and intends to shoot a [portion of] minimum of one day of principal and ongoing photography on a stage at a qualified film production facility on a set or sets. For the purposes of this definition a day of shooting principal photography shall mean a minimum of eight hours from first unit crew call to wrap during which time the director, first unit crew and principal performer(s) are engaged in the production of principal photography on a stage on a set or sets built specifically for the production. A Level Two applicant must shoot 10% of all principal photography days at a qualified film production facility on a set or sets built specifically for the production as outlined above.

- (b) “Allocation year” means the particular tax year for which tax credits are allocated pursuant to section 24(e) of the Tax Law, which year shall be determined [based upon receipt of a

complete final application] by the amount of funds available as of the date of issuance of the tax credit certificate.

\* \* \*

(i) “Diversity impact data” means information submitted by an authorized applicant that describes the gender and race/ethnicity of all individuals working on a production seeking the tax credit under this Part. This shall include information on the diverse business ownership of vendors working on a production, in addition to job creation numbers for production and post-production staff and crew at entry, middle and management level positions; and talent positions (cast and extras).

(j) “Diversity plan” means a written document submitted with the initial application which includes, but is not limited to, 1) an authorized applicant’s specific goals for hiring a diverse workforce on a production that applies for the tax credit under this Part; 2) how such authorized applicant intends to participate in training, education, and recruitment programs that are designed to promote and encourage the training and hiring in the film and television industry of New York residents who represent the diversity of the State's population; and 3) an authorized applicant’s plan for hiring vendors with diverse ownership. The diversity plan shall detail the manner in which the applicant proposes to achieve its goals to ensure employment of a diverse workforce on the production.

(k) “Diversity report” means a written document submitted with the final application that includes, but is not limited to: 1) diversity impact data, 2) illustrates how the authorized applicant has met or made good faith efforts to meet the specific goals for hiring a diverse workforce outlined in their diversity plan; 3) how the authorized applicant has participated in training,

education, and recruitment programs that are designed to promote and encourage the training and hiring in the film and television industry of New York residents who represent the diversity of the State's population; and 4) how the authorized applicant has executed its plan for hiring vendors of diverse ownership.

([i] l) “End credit requirements” means those acknowledgements that a qualified film production company or qualified independent film production company, which has applied for credit under the provisions of this section, agrees to include in each qualified film as a condition for the granting of the credit. Each qualified film shall include [either (1)] in the end credits, the phrase “Filmed with the support of the New York State Governor’s Office of Motion Picture and Television Development” and a logo provided by the Governor’s Office of Motion Picture and Television Development [or (2) for each qualified film distributed by DVD, or other media for the secondary market, a New York promotional video approved by the Governor’s Office of Motion Picture and Television Development].

\* \* \*

([r] u) “Post-production” means the final stage in a qualified film’s production after principal and ongoing photography is completed, including, but not limited to, editing, Foley recording, automatic dialogue replacement, sound editing, special effects, scoring and music editing, beginning and end credits, [negative cutting], soundtrack production, the addition of sound/visual effects, and dubbing. Advertising and marketing activities and expenses are not included in post-production.

\* \* \*

([t] w) “Principal and ongoing photography” means [the filming of the major and significant portions of a qualified film that involves the principal actors/actresses] the period of time during which the majority of the film is shot with the participation of actors, director and first unit crew. Re-shoot days with actors, director and crew are considered principal photography. Second unit shoots, and pickup shots without director and actor(s) are not considered principal photography.

\* \* \*

([x] aa) “Qualified film” means a feature-length film, television film, relocated television production, television pilot [and/or each episode of a] or television series, regardless of the medium by means of which the film, pilot or [episode] series is created or conveyed. For the purposes of the credit provided by these regulations only, a "qualified film" with the exception of a television pilot, whose majority of principal photography shooting days in the production of the qualified film are shot in Westchester, Rockland, Nassau, or Suffolk county or any of the five New York City boroughs shall have a minimum budget of one million dollars. A "qualified film", with the exception of a television pilot, whose majority of principal photography shooting days in the production of the qualified film are shot in any other county of the state than those listed in the preceding sentence shall have a minimum budget of two hundred fifty thousand dollars. Qualified film shall not include: (1) a documentary film, news or current affairs program, interview or talk program (unless such talk program meets the requirements of subdivision (ac) of this section, how-to (i.e., instructional) film or program, film or program consisting primarily of stock footage, sporting event or sporting program, game show, award ceremony, film or program intended primarily for industrial, corporate or institutional end-users, fund-raising film or

program, daytime drama (i.e., daytime soap opera), commercials, music videos or “reality” program; or (2) a production for which records are required under section 2257 of title 18, United States Code, to be maintained with respect to any performer in such production (reporting of books, films, etc. with respect to sexually explicit conduct); or (3) a compilation of short films or webisodes aggregated to meet either the definition of television film or television series under these regulations; or (4) other than a relocated television production, a television series commonly known as variety entertainment, variety sketch and variety talk, i.e., a program with components of improvisational or scripted content (monologues, sketches, interviews), either exclusively or in combination with other entertainment elements such as musical performances, dancing, cooking, crafts, pranks, stunts, and games. However, a qualified film shall include a television series as described in subparagraph (4) of this paragraph only if an application for such series has been deemed conditionally eligible for the tax credit under this section prior to April first, two thousand twenty, such series remains in continuous production for each season, and an annual application for each season of such series is continually submitted for such series after April first, two thousand twenty. Title 18, United States Code, is available for public inspection and copying at the following address: New York State Department of Economic Development, 625 Broadway, 8th floor, Albany, NY 12245.

\* \* \*

([z] ac) “Qualified film production facility” means a film production facility in New York State, which contains at least one sound stage having a minimum of 7,000 square feet of contiguous open unimpeded production space; provided, however, that except with respect

to a qualified film production facility being used by a qualified independent film production company: (1) a film production facility in the City of New York must contain at least one sound stage having a minimum of 7,000 square feet of contiguous open unimpeded production space that is sound proof with a Noise Criteria of 30 or better, has sufficient heating and air conditioning for shooting without the need for supplemental units, incorporates a permanent grid and sufficient built-in electric service for shooting without the need for generators, and is column-free with a clear height of at least 16 feet under the permanent grid for facilities constructed on or after January first, two thousand nineteen, and at least twelve feet under the permanent grid for facilities constructed before and which have otherwise met the requirements of this section by January first, two thousand nineteen; and (2) an armory owned by the State or City of New York located in the City of New York that does not satisfy the criteria of paragraph (1) of this subdivision shall be treated as a qualified film production facility upon certification by the Department of a petition submitted to the Department by a qualified film production company establishing that no qualified film production facility is available in the City of New York that has stage space available for shooting such company's film. Such petition shall be submitted no later than 90 days prior to the start of principal photography for the qualified film and the Department shall have 10 days to certify or reject the petition. A stage will be deemed unavailable if consideration has been paid for its use or such stage is currently under an agreement with an option for use and, in either circumstance, such period of use includes the petitioner's estimated start date of principal photography.

\* \* \*

(a[f]i) “Television pilot” means the initial episode produced for a proposed television series[.

The category will include shorter formats which are known as television presentation, a production of at least 15 minutes in length, produced for the purpose of selling a proposed television series, but not intended for broadcast.] of at least thirty (30) minutes in length (inclusive of provision for commercial advertisement and interstitial programming.)

(a[g]j) “Television series” means a regularly occurring production intended to run in its initial broadcast, regardless of the medium or mode of its distribution, in a series of narrative and/or thematically related episodes, each of which has a running time of at least thirty (30) minutes in length (inclusive of commercial advertisement and interstitial programming, if any). For the purposes of this definition only, a television series produced by and for media services providers described as streaming services and/or digital platforms (and excluding network/cable) shall mean a regularly occurring production intended to run in its initial release in a series of narrative and/or thematically related episodes, the aggregate length of which is at least 75 minutes, although the episodes themselves may vary in duration from the thirty (30) minutes specified for network/cable production.

Section 2. Paragraph 1 of subdivision (a) and subdivision (b) of section 170.4 are amended as follows:

§ 170.4 Application Process.

(a) *Initial application.*

- (1) An authorized applicant shall submit an initial application to the Department prior to the start of principal photography. An authorized applicant must also submit a diversity plan with its initial application.

\* \* \*

(b) *Final application.*

Upon receipt of the final application, the Department may request additional documentation, including copies of receipts of qualified production costs, to help determine if the production is a qualified film and qualifies for the Empire State film production tax credit. An authorized applicant must submit a diversity report with its final application. The Department shall approve or disapprove the final application based upon criteria set forth in section 170.6(b)[(1-9)] of this Part. If the final application is approved, the Department shall issue a certificate of tax credit to the approved applicant. The Department shall provide a copy of such certificate of tax credit to the Department of Taxation and Finance. If the final application is disapproved, the Department shall provide the applicant with a notice of disapproval which shall state the reasons therefor. Such disapproval shall be a rejection of the applicant's final application. A disapproved applicant may appeal such decision pursuant to section 170.8 of these regulations or reapply pursuant to the provisions of this Part.

Section 3. Section 170.5 is amended as follows:

§ 170.5 Allocation of Empire State film production tax credit.

The amount of the credits given for each [calendar] allocation year shall be allocated in order of priority based upon [receipt of a complete final application] issuance of tax credit

certificates. In the event that an approved applicant's Empire State film production tax credit would exceed the maximum amount of credits allowed for that given year, the approved applicant's credit will be allocated on a priority basis in the immediately succeeding [calendar] allocation year.

Section 4. Paragraph (12) is amended and (13) is added to subdivision (a) and paragraph (9) is amended and (10) added to subdivision (b) of section 170.6 as follows:

§ 170.6 Criteria for evaluation of applications.

(a) *Initial application.*

An initial application shall be reviewed by the Department to determine, in its discretion, that all of the following criteria are met:

\* \* \*

(12) if the applicant is seeking credit on any costs incurred in New York outside a qualified film production facility, and the projected qualified production costs (excluding post-production costs) paid or incurred which are attributable to the use of tangible property or the performance of services at a qualified film production facility in the production of a qualified film are less than \$3 million, then the shooting days spent in New York outside of a film production facility in the production of the qualified film are projected to equal or exceed 75 percent of the total shooting days spent within and without New York outside of a film production facility in the production of such qualified film[.];  
and

(13) the authorized applicant has submitted a diversity plan.

(b) *Final application.*

A final application shall not be approved by the Commissioner unless the Commissioner determines, in his or her discretion, that the following criteria are met:

\* \* \*

(9) the applicant has supplied documentation (e.g. still shot, frame grab, finished DVD or other documentation such as the Department may require) that the end credit requirements set forth in section 170.2(i) of this Part have been met[.];

(10) the applicant has completed a diversity report and the extent to which the applicant has met or made good faith efforts to meet the specific goals outlined in their diversity plan; including how the applicant has participated in training, education and recruitment programs that are designed to promote and encourage the training and hiring of New York State residents who represent the diversity of the State's population. With respect to subdivision 10 above, the Department may issue guidelines to delineate its process for analyzing good faith efforts to meet goals on a diversity plan.

Section 5. Existing language of section 170.7 is lettered subdivision (a) and new Subdivision

(b) is added as follows:

§ 170.7 Third Party Verifications

(b) The Department shall maintain a list of certified public accountants which may be utilized by approved applicants to provide the third party verification services pursuant to

paragraph (a) above. The Department may also development procedures and performance standards for such certified public accountants to follow. Any certified public accountants failing to meet the requirements of the Department's procedures and performance standards for certified public accountants may be removed from the list immediately.