Section 300.1 Purpose and general description.

(a) The purpose of these regulations is to set forth the application process for the Empire State Digital Gaming Media Production Credit Program ("the Program") established by [Chapter]chapter 59 of the Laws of 2022 and amended by chapter 59 of the Laws of 2025. Pursuant to [Chapter] chapter 59 of the Laws of 2022, the Department of Economic Development has been granted the authority to promulgate regulations to establish procedures for the allocation of such credits, including, but not limited to, provisions describing the application process, the due dates for such applications, the standards which shall be used to evaluate the applications, the documentation that will be provided to taxpayers by the department to substantiate to the New York State Department of Taxation and Finance the amount of tax credits allocated to such taxpayers, and under what conditions all or a portion of this tax credit may be revoked. The Department of Economic Development shall administer the [program] Program, including the issuance of tax credit certificates.

(b) A taxpayer which is a digital gaming media production entity engaged in qualified digital gaming media production, or who is a sole proprietor of or a member of a partnership, which is a digital gaming media production entity engaged in qualified digital gaming media production, and is subject to tax under article [nine-A or twenty-two of the tax law] 9-A or 22 of the Tax Law, shall be allowed a credit against such tax to be computed as provided for herein for taxable years beginning on or after January 1, 2023 and before January 1, 2028.

(c) The amount of the credit shall be the product (or pro rata share of the product, in the case of a taxpayer who is a partner in a partnership, member of a limited liability company or shareholder in a subchapter S corporation) of [twenty-five percent] 25 percent and the [qualified] credit eligible digital gaming media production costs of a qualified digital gaming media production.

(d) [Qualified digital gaming media production costs] Credit eligible wages for a qualified digital gaming media production incurred and paid in this [state]State but outside the metropolitan commuter transportation district as defined in section [twelve hundred sixty-two of the public authorities law]1262 of the Public Authorities Law shall be eligible for a credit of [ten]10 percent of such credit eligible production costs in addition to the credit specified in subdivision (c) of this section.

(e) Up to [four] $5 million dollars in [qualified digital gaming media production costs] credit eligible wages per production shall be used in the calculation of this credit. Digital gaming media production costs shall not include those costs used by the taxpayer or another taxpayer as the basis calculation of any other tax credit allowed under the [tax law]Tax Law.

Section 300.2 Definitions.

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

(a) "*Allocation year*" means the tax year for which tax credits are allocated pursuant to section 45 of the Tax Law, which shall be determined by the amount of funds available as of the date of issuance of the tax credit certificate.
(b) [*Authorized] [a]"Applicant"* means a qualified digital gaming media production company that is scheduled to begin a qualified [engaged in] digital gaming media production within 90 days after submitting a complete initial application to the department.
(c) *"Certificate of conditional eligibility"* means a notification by the department to the authorized applicant indicating that the authorized applicant appears to meet the criteria set forth in section 300.6(a) of this Part and is being considered for the [e] Empire [s]State [d]Digital [g]Gaming [m]Media [p]Production credit pending successful completion and approval of the final application. Such notification may include, but not be limited to, the following information: name and address of the authorized applicant, taxpayer identification number, a statement that the initial application meets the criteria for conditional eligibility under section 300.6(a) of this Part and a disclaimer stating that actual receipt of the tax credit is subject to completion and approval of its final application.
(d) *"Certificate of tax credit"* means a certificate issued by the department which states the amount of the Empire [s]State [d]Digital [g]Gaming [m]Media [p]Production credit that the approved applicant has qualified for based on the department's analysis under section 300.6(b) of this Part. Such certificate may include, but not be limited to, the following information: name and address of the approved applicant, name of the qualified gaming media production the credit applies to, the amount of the tax credit to be received by the approved applicant, allocation year of the tax credit earned, and a disclaimer stating that actual receipt of the tax credit is subject to the statutory maximum amount of credits that are allocated for the [program] Program.
(e) *"Commissioner"* means the Commissioner of the New York State Department of Economic Development.

(f) *"Complete application*" means that all required information is provided in the form and manner prescribed by the department.

(g) *"Completion of a digital gaming media production"* means the date that a digital gaming media production is built or delivered [has been released for the first time to the public and/or] to its intended [audience] users.

(h) *"Credit eligible wages"* means qualified digital gaming media costs to the extent those wages and salaries do not exceed $200,000 per individual.

(i) *"Credit period"* means from the start of production of the qualified digital gaming media production after the initial application is submitted until the end of production when the qualified digital gaming media production is built or delivered to its intended users. An applicant that has multiple applications with different application types (i.e., Playable Concept, Development Build, and/or Launch & Post Content) of a qualified digital gaming media production in the Program cannot have overlapping credit periods.

([h]j) *"Department"* means the New York State Department of Economic Development.

([i]k) *"Digital gaming media production costs"* mean exclusively any costs for wages or salaries paid to individuals, other than actors [or], writers, and/or track composers [directly] employed for services performed by those individuals directly and predominantly in the creation of a digital gaming media production or productions. Up to [one hundred thousand dollars]$200,000 in wages and salaries paid to each [employee] individual, other than actors, [and] writers, and track composers [directly] employed shall be used in the calculation of this credit. In addition, digital gaming media production costs [mean exclusively] include but are not limited to payments for services performed directly and predominantly in the development (including concept and prototype creation), design (including narrative direction and sound design), production (including [concept creation] testing and encoding), [design, production (including testing), editing (including encoding)] editing (including bug fixing) and compositing (including the integration of digital files for interaction by end users) of digital gaming media. Digital gaming media production costs shall not include expenses incurred for the distribution, marketing, promotion, or advertising content generated by end users, other costs not directly and predominantly related to the creation, production or modification of digital gaming media or costs used by the taxpayer as a basis of the calculation of any other tax credit allowed under this [chapter] Chapter. The department shall, in its sole discretion, determine what is a digital gaming media production cost.

([j]l) *"Diversity impact data"* means information submitted by an authorized applicant that describes the gender and race/ethnicity of all employees hired for a production seeking the tax credit under this Part. This information shall include job

creation numbers for production and post-production staff and crew; entry level positions; management positions; production staff positions, and talent related positions.
([k]m) *"Diversity plan"* means a written document submitted with the initial application which includes, but is not limited to, an authorized applicant's specific goals for hiring a diverse workforce on a production such as numerical goals for each category of employment identified by the State, or a detailed narrative explaining the actions the authorized applicant intends to take in order to achieve its specific goals for hiring a diverse workforce on a production that applies for the tax credit under this Part. [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.]
([l]n) *"Diversity report"* means a written document submitted with the final application that includes, but is not limited to, diversity impact data and how the applicant has met or made good faith efforts to meet the specific goals outlined in their diversity plan.
([m]o) *"Engaged in qualified digital gaming media production"* means for the purposes of this Part the legal entity that is directly responsible for payment of the direct production expenses of a digital gaming media production and the legal entity which hires third-party vendors to work on the production as applicable.
([n]p) *"Final application"* means information concerning actual expenditures regarding a qualified digital gaming media production that could make it eligible for the Empire State Digital Gaming Media Production Credit under section 45 of the Tax Law and the provisions of this Part provided in a form and manner as prescribed by the department and submitted by an applicant after it has completed production of a qualified digital gaming media production. Such application may include, but not be limited to: [final production project summary, final budget cost qualifier, general ledger, separate ledger reports for qualified and non-qualified costs] actual data with regard to the qualified digital gaming media production, its production costs, its productions schedule, and any other information the department determines is necessary.
([o]q) *"In-credit requirements"* means those acknowledgements that a qualified digital gaming media production company which has applied for credit under the provisions of this section, agrees to include in each qualified digital gaming media production as a condition for the granting of the credit. Each digital gaming media production shall include in the in-game credits of each digital gaming media production language and a logo to be provided by the [Governor's Office of Motion Picture and Television Development] department acknowledging the State's role in the creation of the production in a location readily accessible and easily readable by the end user.

([p]r) *"Initial application"* means information concerning projected expenditures regarding a digital gaming media production, and, if applicable, its digital gaming media production type, that could make it eligible for the Empire State Digital Gaming Media Production credit under section 45 of the Tax Law and the provisions of this Part provided in a form and manner as prescribed by the department and submitted by an authorized applicant. Such application may include, but is not limited to, the following information: initial [production] project summary, [budget cost qualifier,] and supporting documentation such as estimated budget, content document, [estimated production start date and delivery date,] applicant shareholder information, and any other information the department determines is necessary.

([q]s) *"Premature application"* means an initial application in which the department reasonably determines that an authorized applicant has submitted an application more than [ninety (90)] 90 days before the start date of its [their] qualified digital gaming media production.

([r]t) *"Program"* means the Empire State Digital Gaming Media Production credit program.

([s]u) *"Qualified digital gaming media production"* means:

(1) a website, the digital media production costs of which are paid or incurred predominately in connection with:

(i) video simulation, animation, text, audio, graphics or similar gaming related property embodied in digital format; and

(ii) interactive features of digital gaming (e.g., links, message boards, communities or content manipulation);

(2) video or interactive games produced primarily for distribution over the internet, wireless network or successors thereto; and

(3) animation, simulation or embedded graphics digital gaming related software intended for commercial distribution regardless of medium; provided, however, that the qualified digital gaming media productions described in paragraphs (1) through (3) of this subdivision must have digital media production costs equal to or in excess of [one hundred thousand dollars ($100,000)]$50,000 per production. Some examples of qualified digital gaming media production include, but are not limited to, the following:

video or interactive games, including extensions of video games provided their content is new and playable for an end-user; simulation software; interactive educational or training products; and software applications that provide connectivity and communications between mobile devices and digital gaming media production web platforms.

A qualified digital gaming media production does not include a website, video, interactive game or software that is used predominately for: electronic commerce (retail or wholesale purposes other than the sale of video interactive games), gambling (including activities regulated by a New York gaming agency), political advocacy purposes, nor does it include a website, video, interactive game, or software that depicts obscene material as defined in section 235 of the [penal law] Penal Law. The [Department] department, in its sole discretion, shall determine what constitutes a qualified digital gaming media production.

([t]v) *"Qualified digital gaming media production costs"* means digital gaming media production costs only to the extent such costs are attributable to the use of property or the performance of services by any persons within the [state] State directly and predominantly in the creation, production or modification of digital gaming related media. Such total production costs incurred and paid in this [state] State shall be equal to or exceed [seventy-five percent (75%)] 51 percent of total cost of an eligible production incurred and paid within and without this [state] State. Qualified digital gaming media production costs do not include wages paid to actors, writers or track composers, or any bonuses or lump sum payments. Wages related to the creation of digital gaming media for any person who predominantly serves in a corporate capacity in the role of chief executive officer, chief financial officer, president, treasurer or similar position if the digital gaming media production entity has more than 10 employees; or wages to a person serving in such a role for the digital gaming media production entity if the person was employed by a related person of the digital gaming media production entity within 60 months of the date the digital gaming media production entity applied for the tax credit certificate described in this Part shall not be included as digital gaming media production costs. For purposes of the preceding sentence, a related person shall have the same meaning as the term "related person" in section 465 of the Internal Revenue Code. Additionally, any other income or other distribution for royalties, licensing, or other nonwage distribution, to an individual who holds an ownership interest in a digital gaming media production entity shall not be included as digital gaming media production costs.

([u]w) *"Qualified digital gaming media production entit*y" means a corporation, partnership, limited partnership or other entity or individual engaged in qualified digital gaming development media production.

(x) *"Qualified digital gaming media production type"* is an optional application type that describes the development stage of the qualified digital gaming media production. Application types include but not limited to Playable Concept, Development Build, and Launch & Post-Content. An applicant can apply for a complete production schedule or may apply for a development stage of a qualified

digital gaming media production.
(1) Playable Concept is an application type that refers to a production that is creating a digital gaming media production that is a prototype, minimum viable product, or a vertical slice.
(2) Development Build is an application type that refers to a production that has begun its initial stage of development but is expanding its early iterations for the full interactive experience.
(3) Launch & Post Content is an application type that refers to a production that is developing its final iteration for public launch or intended users. A prototype and full interactive experience may be completed prior to the initial application, but there is expansion or other extensive development that includes different interactive element(s) for a qualified digital gaming media production.
(y) *"Services"* means labor performed directly and predominantly in the development (including concept and prototype creation), design (including narrative direction and sound design), production (including testing and encoding), editing (including bug fixing) and compositing (including the integration of digital files for interaction by end users) of digital gaming media. Services do not include acting, writing, and track composing for the qualified digital gaming media production. Services do not include labor for distribution, marketing, promotion, and/or production of advertising content for the qualified digital gaming media production or services not directly and predominantly related to the creation, production, or modification of the qualified digital media production including business and financial management.

300.3 Eligibility.

For the purposes of this Part, only an [authorized] eligible applicant shall be [eligible] allowed to apply for the Empire State Digital Gaming Media Production credit.

300.4 Application process.

(a) Initial application.

(1) An [authorized] applicant shall submit an initial application to the department [prior to it paying or incurring digital gaming media production costs on a qualified digital gaming media production but] no sooner than [ninety (90)] 90 days before the start date of their qualified digital gaming media production. Digital gaming

media production costs on a qualified digital gaming media production paid or incurred prior to the submission of an initial application shall not count towards calculation of the tax credit threshold or as an eligible expense under this Program. An [authorized] applicant must also submit a diversity plan with its initial application.

(2) The [Department]department shall review the initial application and determine whether the [authorized] applicant meets the eligibility criteria set forth in section 300.6(a) of this Part.
(3) After review of the initial application, the department will notify the [authorized] applicant of its eligibility and may issue a certificate of conditional eligibility to the [authorized] applicant.

(b) Final application.

(1) Upon receipt of the final application, the [Department]department may request additional documentation, including records of invoices and wages paid [copies of receipts of qualified] digital gaming media production costs, to help determine if the production qualifies for the Empire State Digital Gaming Media Production credit. [Note that salaries or other income distribution related to the creation of digital gaming media for any person who predominantly serves in a corporate capacity in the role of chief executive officer, chief financial officer, president, treasurer or similar position shall not be included as digital gaming media production costs if the digital gaming media production entity has more than ten employees. Salaries or other income paid to a person serving in such a role for the digital gaming media production entity shall also not be included if the person was employed by a related person of the digital gaming media production entity within sixty months of the date the digital gaming media production entity applied for the tax credit certificate described in this Part. For purposes of the preceding sentence, a related person shall have the same meaning as the term related person in section 465 of the Internal Revenue Code. Furthermore, any income or other distribution to any individual including, but not limited to, licensing or royalty fees, who holds an ownership interest in a digital gaming media production entity, whether or not such individual is serving in the role of chief executive officer, chief financial officer, president, treasurer or similar position for such an entity, shall not be included as digital gaming media production costs.]
(2) The [Department]department shall approve or disapprove the final application based upon criteria set forth in section 300.6(b) of this Part. If the final application is approved, the [Department]department shall issue a certificate of tax credit to the approved applicant. The taxpayer shall be allowed to claim only the amount listed

on the certificate of tax credit for that taxable year. Under no circumstances may a single taxpayer receive more than[one million five hundred thousand dollars ($1,500,000)] $1.5 million in tax credits per year.
(3) If the final application is [disapproved] denied, the [Department]department shall provide the applicant with a notice of [disapproval] denial which shall state the reasons therefor. Such [disapproval] denial shall be a rejection of the applicant's final application. An [disapproved] applicant who has been denied may appeal such decision pursuant to section 300.8 of this Part or reapply pursuant to the provisions of this Part.

300.5 Allocation of Empire [s]State [d]Digital [g]Gaming [m]Media [p]Production credit.

The aggregate amount of tax credits allowed under this [program] Program in any taxable year shall be [five million dollars] $5 million. Such credit shall be allocated by the Department of Economic Development in order of priority based upon the date of filing a complete final application for allocation of digital gaming media production credit. If the total amount of allocated credits applied for in any particular year exceeds the aggregate amount of tax credits allowed for such year under this section, such excess shall be treated as having been applied for on the first day of the subsequent taxable year. Provided, however, that for taxable years beginning on or after January 1, 2023, if the total amount of allocated credits applied for in any particular year is less than the aggregate amount of tax credits allowed for such year under this section, any unused portion may be carried over and added to the aggregate amount of credits allowed in the next succeeding taxable year or years.

300.6 Criteria for evaluation of applications.

(a) Initial application. An initial application shall be reviewed by the [Department] department to determine, in its sole discretion, that all of the following criteria are met:
(1) the application is complete;
(2) the application is not premature;
(3) the authorized applicant is a qualified digital gaming media production entity;
(4) total production costs are projected to meet or exceed $50,000;

([4]5) the authorized applicant's projected total production costs incurred and paid in this [state]State shall be equal to or exceed [seventy five percent (75%)] 51 percent of the total costs of an eligible production incurred and paid within and without this [state] State;

([5]6) the authorized applicant did not knowingly submit false or misleading information to the [Department]department;

([6]7) the authorized applicant intends to comply with the in-credit requirements as defined in section 300.2(o) of this Part; and

([7]8) the authorized applicant filed a diversity plan with the [Department]department.

(b) Final application. A final application shall not be approved by the commissioner unless the commissioner determines, in their discretion, that the following criteria are met:

(1) the application is complete;

(2) a qualified digital gaming media production was completed;

(3) total production costs meet or exceed $50,000;

([3]4) the authorized applicant's actual total production costs incurred and paid in this State equal or exceed [seventy five percent (75%)] 51 percent of the total costs of an eligible production incurred and paid within and without this [state]State;

([4]5) the authorized applicant did not knowingly submit false or misleading information to the [Department]department;

([5]6) the authorized applicant has supplied documentation that it has complied with the in-credit requirements set forth in section 300.2(o) of this Part;

([6]7) the authorized applicant filed a diversity [plan] report with the Department of Economic Development; and

([7]8) the extent to which the applicant has met or made good faith efforts to meet the specific goals outlined in their diversity plan.

With respect to paragraph ([7]8) of this subdivision, the [Department]department may issue guidelines to further delineate its process for analyzing good faith efforts to meet goals on a diversity plan.

300.7 Record retention.

All authorized and approved applicants must maintain records, in paper or electronic form, of any qualified production costs used to calculate their potential or actual benefit(s) under this [program] Program for a minimum of three years

from the date the applicant claims the tax credit. The [Department]department shall have the right to request such records upon reasonable notice.

300.8 Appeal process.

If the authorized applicant's final application is [disapproved] denied by the [Department]department, or if the approved applicant disagrees with the amount of the tax credit granted by the [Department]department, the applicant shall have a right to appeal. In the case of an appeal from a [disapproval] denial of a final application, such appeal shall be made by sending a letter to the New York State Department of Economic Development, Attn: Counsel's Office, 625 Broadway, 8th floor, Albany, NY 12245, within 30 days from the date of the denial letter issued by the [Department]department. In the case of an appeal from a disagreement of the amount of the tax credit issued, such appeal shall be made by sending a letter to the same address as listed above within [thirty (30)] 30 days from the date of issuance of the certificate of tax credit. Failure to request an appeal within [thirty (30)] 30 days will be deemed a waiver of applicant's right to appeal.

Upon receipt of a timely letter of appeal, an independent hearing officer will be appointed by the [Commissioner]commissioner to handle the appeal. The independent hearing officer shall make a report on the appeal to the [Commissioner]commissioner. The [Commissioner]commissioner or designee shall issue a final order within [sixty (60)]60 days of the report. A copy of the final order will be issued to the appellant within [ten (10)]10 days after the date the [Commissioner]commissioner or designee renders the final order.

300.9 Exchange of information with Department of Taxation and Finance.

Notwithstanding any provision of this Part, employees and officers of the [Department]department and the Department of Taxation and Finance shall be allowed and are directed to share and exchange information regarding the credits applied for, allowed, or claimed pursuant to this Part and taxpayers who are applying for credits or who are claiming credits, including information contained in or derived from credit claim forms submitted to the [Department]department and applications for credit submitted to the [Department]department.

300.10 Reporting.

(a) The Department of Economic Development shall file a report on a biannual basis with the director of the [division of the budget] Division of the Budget and the chairpersons of the [assembly ways and means committee and senate finance committee] Assembly Ways and Means Committee and Senate Finance Committee. The report shall be filed no later than [thirty]30 days before the mid-point and the end of the [state]State fiscal year. The first report shall cover the calendar half year that begins on January 1, 2024[first, two thousand twenty-four]. Each report must contain the following information for the covered calendar half year:

(1) the total dollar amount of credits allocated pursuant to section [forty-five of the tax law] 45 of the Tax Law during the half year, broken down by month;

(2) the number of digital gaming projects, which have been allocated tax credits of less than[one million dollars] $1million per project, and the total dollar amount of credits allocated to those projects;

(3) the number of digital gaming projects, which have been allocated tax credits of more than [one million dollars]$1million and the total dollar amount of credits allocated to those projects;

(4) a list of each eligible digital gaming project and for each of those projects:

(i) the estimated number of employees associated with the project;

(ii) the estimated qualifying costs for the project;

(iii) the estimated total costs of the project;

(iv) the credit eligible employee hours for each project; and

(v) total wages for such credit eligible employee hours for each project; and

(5) (i) the name of each taxpayer allocated a tax credit for each project and the county of residence or incorporation of such taxpayer or, if the taxpayer does not reside or is not incorporated in New York, the state of residence or incorporation; however, if the taxpayer claims a tax credit because the taxpayer is a member of a limited liability company, a partner in a partnership or a shareholder in a subchapter S corporation, the name of each limited liability company, partnership or subchapter S corporation earning any of those tax credits must be included in the report instead of information about the taxpayer claiming the tax credit;

(ii) the amount of tax credit allocated to each taxpayer; provided however, if the taxpayer claims a tax credit because the taxpayer is a member of a limited liability company, a partner in a partnership or a shareholder in a subchapter S corporation,

the amount of tax credit earned by each entity must be included in the report instead of information about the taxpayer claiming the tax credit; and
(iii) information identifying the project associated with each taxpayer for which a tax credit was claimed under section [forty-five of the tax law]45 of the Tax Law.
(b) The Department of Economic Development shall file a report on a triennial basis with the director of the [division of the budget]Division of the Budget and the chairpersons of the [assembly ways and means committee and senate finance committee]Assembly Ways and Means Committee and Senate Finance Committee. The first report shall be filed no later than March 1, 2025[first, two thousand twenty-five]. The report must be prepared by an independent third-party auditor and include:

(1) information regarding the Empire State Digital Gaming Production Credit [program] Program including the efficiency of operations, reliability of financial reporting, compliance with laws and regulations and distribution of assets and funds;

(2) an economic impact study prepared by an independent third-party of the [program] Program; and

(3) any other information or statistical information that the commissioner of Economic Development deems to be useful in analyzing the effects of the programs.

(c) In the event that this tax credit program is no longer legally in effect, the [Department]department shall not be required to produce the reports referenced in subdivisions (a) and (b) of this section.