



LEXSTAT 41 NJR 2372(A)

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RULE PROPOSALS

**COMMUNITY AFFAIRS
URBAN ENTERPRISE ZONE AUTHORITY**

41 N.J.R. 2372(a)

Proposed Amendments: N.J.A.C. 5:120-1 and 2

Proposed Recodifications with Amendments: N.J.A.C. 5:121-1 and 2 as 5:120-3 and 4

Proposed Repeals: N.J.A.C. 5:120-2.2, 2.7, 2.8, 2.9 and 2.10, and 5:121-1.2

Proposed New Rules: N.J.A.C. 5:120-1.3, 3.6 and 5

[Click here to view Interested Persons Statement](#)

Urban Enterprise Zone Authority Rules

Authorized By: Urban Enterprise Zone Authority, Kathleen G. Kube, Acting Executive Director.

Authority: *N.J.S.A. 52:27H-65*.

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

Proposal Number: PRN 2009-172.

Submit written comments by August 14, 2009 to:

Kathleen G. Kube
Acting Executive Director
Urban Enterprise Zone Authority
650 South Broad Street, 3rd Floor
Trenton, NJ 08625

The agency proposal follows:

Summary

Effective July 1, 2008, pursuant to P.L. 2008, c. 27, §16 (*N.J.S.A. 34:1B-225*) the Urban Enterprise Zone Authority (UEZA) was established as an authority allocated in but not of the New Jersey Department of Community Affairs. As a result of the change, *N.J.A.C. 12A:120* and *12A:121* were recodified pursuant to a notice of administrative changes published in the New Jersey Register on March 2, 2009 at *41 N.J.R. 1016(b)*. The UEZA has evaluated current practices

that have evolved with the growth of the program and proposes to implement those practices in the amendments, repeals and new rules set forth below. The proposal also consolidates Chapters 120 and 121 in order to simplify the rules and to eliminate redundancy within the two chapters. The subchapters have been reorganized and recodified, and text throughout has been amended to facilitate the effective and constant administration of the UEZ Program at the State and local levels.

As the Authority has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to *N.J.A.C. 1:30-3.3(a)5*.

A summary of the proposed amendments, repeals and new rules follows:

Subchapter 1. Urban Enterprise Zone Program

***N.J.A.C. 5:120-1.1* Applicability and scope**

The proposed amendments to this section address the recent legislative changes whereby the UEZA became in but not of the Department of Community Affairs, including the necessary change in address. Subsection (d) is also added in order to clarify that questions regarding specific zones should be addressed to local authorities and not to the UEZA.

***N.J.A.C. 5:120-1.2* Definitions**

Under the current rules, definitions were located in *N.J.A.C. 5:120-1.2* and 2.2 as well as *N.J.A.C. 5:121-1.2* and 3.2. The proposed amendments [page=2373] seek to consolidate those definitions into *N.J.A.C. 5:120-1.2* in order to simplify the rules. All duplications have been eliminated in the consolidation.

The following definitions are proposed to be moved from *N.J.A.C. 5:120-2.2* to *N.J.A.C. 5:120-1.2*: "qualified small business" and "zone business benefits." The definition of "qualified small business" has been enhanced to both: 1) carryover the current definition based on number of employees, and 2) to add the definition based on gross receipts in response to the statutory changes since 2006 regarding the sales tax exemption on purchases. The definition of the term "Secretary" has been eliminated as the New Jersey Commerce and Economic Growth Commission has been abolished, P.L. 2008, c. 27.

The proposed amendments add the following terms: "certification," "Coordinator," "Executive Director," "full-time employee," "'NJEDA' or 'EDA'" and "part-time employee" as points of clarification.

The following terms, defined by the statute, were not included in the current rules or were not fully consistent with the statute, and have now been added or corrected:

"Twenty-five percent factor," a term contained in the statute and referred to by other provisions, is defined to provide clarity.

"Qualified business" is defined in the statute and the current rule definition is clarified for the distinction for a "certified business" (definition added) being a class within qualified businesses, and the process for such businesses to certify annually that they are "qualified businesses." Additionally, the definition addresses the special case of closely-held businesses.

The following terms have been added for the reasons noted:

"Certification" and "recertification" are used in various contexts in the statute and these added definitions provide greater clarity, distinction and consistency with practice.

"Certified business" refers to the status of a qualified business for which a certification or recertification application has been approved by the Administrator, the added definitions formalizing the practice.

"Coordinator" is defined to clarify the rules and usage in light of practice and to delineate more clearly the compliance requirements of the position.

"Executive Director" is defined to establish that this position title associated with the program office does in fact refer to the Administrator, the more broadly understood terminology.

"Full-time employee" and "part-time employee" as defined provide clarity for characterization of full-time and part-time according to hours worked and the equivalency between the two.

"NJEDA' or 'EDA'" has been defined for clarity in conjunction with changes for recent legislation which delegates certain responsibilities to the agency.

For greater clarity, changes to zone boundaries are defined at three levels: "zone boundary revision" is the encompassing phrase for all change to zone boundaries, while "zone boundary expansion" is a zone boundary revision where there is a net increase in the area of the zone and "zone boundary modification" is a change where there is no increase in the zone area.

N.J.A.C. 5:120-1.3 Administrator of the Urban Enterprise Zone

Current *N.J.A.C. 5:120-1.3* is proposed to be amended and recodified as *N.J.A.C. 5:120-1.4*. The UEZA proposes to create a new *N.J.A.C. 5:120-1.3* that will clarify the role of the Administrator of the UEZA. It also establishes a required certification process for zone Coordinators in furtherance of the efficient and consistent administration of the UEZs throughout the State. The mandatory curriculum for zone Coordinators to be established by the Administrator will standardize procedures across the zones and the Administrator's duty to train zone Coordinators and staff to a proficient level.

Sanctions provisions have been provided in furtherance of proper implementation of the program. If a Coordinator does not adhere to the standard procedures, the Administrator may admonish the Coordinator by letter of reprimand. If a failing of due diligence by a Coordinator results in a firm which is not a "qualified business" being entered into the program, that zone shall make the firm whole for any taxes and penalties it may suffer. Likewise, if a Coordinator shall fail to properly notify a firm that it is inactive or has otherwise lost its certification, the zone shall reimburse the firm for any taxes and penalties the firm suffers as a result.

N.J.A.C. 5:120-1.4 Application for zone business benefits

The UEZA proposes to recodify current *N.J.A.C. 5:120-1.3* as *N.J.A.C. 5:120-1.4* with the amendment of requiring the submission of a certification or recertification application package as opposed to a "letter." This amendment is in recognition of current practices developed as part of the expansion of the program, and is necessary in order to maintain the integrity of the application process.

N.J.A.C. 5:120-1.5 Time for application for zone business benefits

Current *N.J.A.C. 5:120-1.4* is proposed to be recodified to *N.J.A.C. 5:120-1.5* with an amendment to render it gender neutral.

N.J.A.C. 5:120-1.6 Zone business benefits eligibility

The UEZA proposes to recodify current *N.J.A.C. 5:120-1.5* as *N.J.A.C. 5:120-1.6* with amendments. Those proposed amendments include obtaining employment data to parallel changes to the certification/recertification process to a three-year cycle discussed at Subchapter 2. Additionally, the proposed amendments change the time reference to "date of application" from "date of its zone certificate of occupancy" in recognition of a previous change in practice and to promote greater fairness and clarity in administration of the process. This change is sought to permit firms a reasonable period to implement the zone business benefits and increase employment, and permit the Coordinators to focus on attracting businesses.

N.J.A.C. 5:120-1.7 Good faith waiver

The UEZA proposes to recodify the good faith waiver section from *N.J.A.C. 5:120-1.6* to *N.J.A.C. 5:120-1.7* with amendments which seek to recognize the unique features, abilities and needs of small businesses. The amendments further clarify what constitutes "good faith" and the requisite proofs to be submitted to the UEZA in support of a claim for a good faith waiver. In subsection (a), the UEZA proposes to substitute "municipality" for "city," in recognition of the diversity of UEZs throughout the State. The proposed amendments create in subsection (b) a tiered system grouping qualified businesses by size based on their capacity to grow, and thereby the business's ability to comply with the definition of a "qualified business" under *N.J.A.C. 5:120-1.2*. Subsection (c) permits the UEZA to modify a good faith waiver upon a showing by the Administrator of a change in economic circumstances.

Subchapter 2. Business Certification for Zone Business Benefits

N.J.A.C. 5:120-2.1 Applicability and scope

The UEZA proposes to amend the requirements for recertification of a business to receive zone benefits from a one-year to a three-year process, through amendments proposed throughout Subchapter 2. In so doing, the UEZA proposes to repeal or delete the provisions related to conditional recertification. It is the experience of the UEZA that a business's growth can be better evaluated over a three-year period in order to accommodate temporary changes in employment. Additionally, subsection (b) is substantially amended to reflect changes on the structuring of the UEZA regulations. Sections dealing with appeals and alternative procedures for creation of employment are now located in Subchapter 2.

References to the UEZA's obligations to report to the Governor and Legislature are removed as they do not reflect the contents of the subchapter. The removal of these references has no effect on the UEZA's continuing obligation to report to the Governor and Legislature.

N.J.A.C. 5:120-2.2 Definitions

The definitions located in *N.J.A.C. 5:120-2.2* have been consolidated into *N.J.A.C. 5:120-1.2*, rendering this section superfluous, and, therefore, *N.J.A.C. 5:120-2.2* is proposed to be repealed.

N.J.A.C. 5:120-2.2 (current 2.3) Reapplication for zone business benefits

Proposed subsection (a) is a recodification of the *N.J.A.C. 5:120-2.3*, amended, in part, to change the term "letter" to "application package." This is a reflection of the current practice of the UEZA in reviewing requests of UEZ businesses to be certified and the amount of information [page=2374] that is necessary for the UEZA to effectively review the business's qualifications. Furthermore, the amended regulation requires an applicant to provide employment statistics for the three-year period prior to recertification or the year prior to certification, and three years subsequent to, the application. The latter extension from the current one-year period is necessary for the UEZ to maintain comparative data in a three-year recertification cycle. This extension is done in conjunction with an extension of the validity of the certification to three years from the previous one-year term. The experience of the UEZA staff has revealed that the three year period is more indicative of the long continued viability of the business as a qualified business than the previous one year period.

Proposed *N.J.A.C. 5:120-2.2*, as proposed for amendment and recodified from *N.J.A.C. 5:120-2.3*, represents a consolidation and recodification, with amendments, of current *N.J.A.C. 5:120-2.3* through 2.12, as well as the incorporation of statutory changes and actual practice since the last major revision of rules. Subsection (a) requires the business to accurately disclose identifying information so that the tax clearance process required before certification and recertification may be implemented for the specific business location, as now required by statute, and that it may be determined whether the physical location of the business is within zone boundaries. The UEZA believes that the consolidation of these procedures is a better reflection of the process which is regularly undertaken by UEZA staff in reviewing and certifying qualified businesses.

Proposed subsection (b) is a recodification of current *N.J.A.C. 5:120-2.4* with an amendment to reflect the change from a one- to three-year certification cycle. To ensure the integrity of the process and consistency in how all applicants are treated, all specified information must be accurate and be received by the UEZA for the application to be accepted and for processing to proceed.

Similarly, subsection (c) is a recodification of current *N.J.A.C. 5:120-2.5* with the section heading made more expository of the text as an introductory paragraph, and proposed subsection (d) is a recodification of current *N.J.A.C. 5:120-2.6* with an amendment to recognize the three-year certification period.

Subsection (e) is a recodification with amendments of current *N.J.A.C. 5:120-2.11*. The amendments reflect the elimination of reference to conditional recertification and a proposed recodification.

Subsection (f) is a recodification of *N.J.A.C. 5:120-2.12* containing amendments necessitated by the enactment of P.L. 2008, c. 27. The proposed amendments further clarify the appeals process based on the experience of the UEZA in handling appeals and eliminate reference to conditional recertification, with emphasis on the following: amended paragraph (f)1 (current(a)) provides that an appeal be initiated within 10 business days to ensure timely and expedited review; amended paragraph (f)3 (current (c)) provides with due regard to Board Agenda scheduling and public notice requirements, the review must be conducted no later than the later of 45 days from receipt of the appeal or the second next Board meeting and publicly noticed as a Board agenda item; and amended paragraph (f)4 (current (d)) provides

that the review will be conducted by the UEZA Board, as the "Secretary" was eliminated with the dissolution of the New Jersey Commerce and Economic Growth Commission.

N.J.A.C. 5:120-2.7 through 2.10

Current sections referring to "conditional recertification" have been eliminated as the basis for conditional recertifications is overcome by the three-year recertification cycle. The sections proposed for repeal include *N.J.A.C. 5:120-2.7, 2.8, 2.9 and 2.10*. By expanding the recertification from one to three years, it is no longer necessary for the UEZA to grant conditional recertifications.

Subchapter 3. Urban Enterprise Zone Boundary Amendments

N.J.A.C. 5:120-3.1 Applicability and scope

The UEZA proposes to recodify current *N.J.A.C. 5:121-1* as *N.J.A.C. 5:120-3*. Given the consolidation of *N.J.A.C. 5:120* and *121*, *N.J.A.C. 5:121-1.1(b)* is no longer necessary, as the proper contact information is referenced in *N.J.A.C. 5:120-1.1(b)*.

N.J.A.C. 5:120-3.2 Standards of eligibility for zone boundary revision

Proposed *N.J.A.C. 5:120-3.2* represents a recodification of current *N.J.A.C. 5:121-1.3*, with amendments. The purpose of the amendments is to restructure zone boundary revisions, removing the distinction for the expansion of a zone and a no net change redistricting, so as to focus on the economic redevelopment objectives and better define which portions of a municipality are includible and effect some consistency on the portion of the municipality includible.

N.J.A.C. 5:120-3.3 Application for zone boundary revisions

This section represents a recodification of *N.J.A.C. 5:121-1.4* with amendments. Proposed *N.J.A.C. 5:120-3.3(a)* distinguishes the case of a zone boundary revision where there will be no net increase in the zone area.

Proposed *N.J.A.C. 5:120-3.3(b)* permits a municipality to apply for a zone boundary expansion provided the expansion would not exceed 10 percent, as defined in *N.J.A.C. 5:120-3.6(b)*, in order to permit expansions that are reasonable in scope for the municipality and do not harshly impact the State's tax revenues.

Proposed *N.J.A.C. 5:120-3.3(c)* makes clear the central concepts to be presented in the application, as carried forward from current *N.J.A.C. 5:121-1.4(a)*, exemplifying the terms listed but not defined in the statute, as well as adding as *N.J.A.C. 5:120-3.3(d)* definitions of the underlying terms "parcel," "area" and "vacant" or "vacancy" to ensure clarity in the process and make the terminology consistent with usage in other urban programs, and, through *N.J.A.C. 5:120-3.3(e)*, linking these terms to "proposed zone boundary revision." In addition, the terminology "proposed zone boundary revision" carries forward in *N.J.A.C. 5:120-3.3(f)*, replacing "boundary change" for clarity and consistency. The municipal governing body must, by *N.J.A.C. 5:120-3.3(g)*, actually "approve" the proposal rather than "support" it as per current regulations. *N.J.A.C. 5:120-3.3(h)* makes clear that the Administrator is charged with making an evaluation of the proposal and making a recommendation for approval or denial by the UEZA Board.

N.J.A.C. 5:120-3.4 Time for zone boundary revisions

This section represents a recodification of *N.J.A.C. 5:121-1.5* with clarifying amendments.

N.J.A.C. 5:120-3.5 Procedure for evaluation of a zone boundary revision application

This proposed amendment represents a recodification of current *N.J.A.C. 5:121-1.6*, with amendments. Paragraph (a)1 is added and the remainder of the paragraphs under (a) are recodified accordingly. The criterion in paragraph (a)1 is proposed in order to emphasize the goal of the UEZA to encourage business growth within participating municipalities.

N.J.A.C. 5:120-3.6 Area to be included within zone boundaries

This new section establishes the parameters under which a zone may modify its established boundaries.

This provision defines modification versus expansion, and seeks to limit both to areas zoned as Commercial, Industrial or Mixed Use. This section then defines the limited case were the zone wishes to modify its boundaries within the current coverage ratio.

In the interest of a reasonable and fair expansion, the section carefully defines the permissible net expansion to a limit of 10 percent of the areas zoned as Commercial, Industrial and Mixed Use which are not currently within the zone.

Subchapter 4. Discretionary Extension of 50 Percent Sales Tax Exemption to Urban Enterprise Zone Municipalities

N.J.A.C. 5:120-4.1 Applicability and scope

The UEZA proposes to recodify current N.J.A.C. 5:121-2 as N.J.A.C. 5:120-4. Given the consolidation of Chapters 120 and 121, *N.J.A.C. 5:121-2.1(b)* is no longer necessary as the proper contact information is referenced in *N.J.A.C. 5:120-1.1(b)*. Subsection (a) is technically amended in order to properly reference "sales and use" taxes, and an amendment is proposed to clarify who may apply for zone benefits.

[page=2375] N.J.A.C. 5:120-4.2 Zone municipality application for 50 percent sales tax exemption

This proposed recodification from *N.J.A.C. 5:121-2.2* contains one technical amendment in paragraph (c) to correct the verb tense to "to be granted."

N.J.A.C. 5:120-4.3 Time for municipal application for 50 percent sales tax exemption

N.J.A.C. 5:121-2.3 is proposed for recodification as N.J.A.C. 5:120-4.3, without amendment.

N.J.A.C. 5:120-4.4 Evaluation and approval process for an application for 50 percent sales and use tax exemptions to an Urban Enterprise Zone municipality

This section represents a recodification of *N.J.A.C. 5:120-2.4* with amendments to the section heading to clarify the purpose of the section, as well as technical amendments.

Subchapter 5. Energy Sales Tax Exemption Program

N.J.A.C. 5:120-5.1 Applicability and scope

Proposed new N.J.A.C. 5:120-5 outlines the limited duties of the UEZA in support of this New Jersey Economic Development Authority (NJEDA) program and the exchange of information involved.

N.J.A.C. 5:120-5.2 UEZA eligibility criteria for Energy Sales Tax Exemption Program

While the administration of the energy sales tax exemption program was transferred to the NJEDA, certain aspects of the program are necessarily intertwined with the UEZA. Therefore, the UEZA proposes new N.J.A.C. 5:120-5.2 in order to clarify the role of the UEZA.

Social Impact

The adoption of the proposed amendments, new rules and repeals would continue the positive social impact of encouraging creation of additional employment opportunities for residents of Urban Enterprise Zones and the municipalities in which they are located and of facilitating municipal efforts to attract business to the zones.

Economic Impact

The economic impact of the program has been, and will continue to be, positive, in that it provides enhanced economic development opportunities for economically-depressed municipalities. These opportunities will continue to result in sounder economic development within those municipalities by broadening and strengthening their tax bases. The State incurs, and will continue to incur, certain administrative costs. A portion of State sales tax revenue generated from sales within the zones is set aside to provide service improvements within the zones. The amendments in large measure recognize statutory changes and resultant changes in practice since the current rules were established. The new costs to

municipalities and businesses will be negligible and readily offset by the benefits of improved regularity and efficiency of administration of the program.

Federal Standards Statement

No Federal standards analysis is required because the amendments, repeals and new rules are not being proposed under the authority of, or in order to implement, comply with or participate in any program established under, Federal law or a State statute that incorporates or refers to Federal law, standards or requirements.

Jobs Impact

The Authority anticipates that jobs will continue to be generated within municipalities as a result of the proposed amendments, repeals and new rules.

Agriculture Industry Impact

The Department does not anticipate any impact upon the agriculture industry as a result of the adoption of the proposed amendments, repeals and new rules.

Regulatory Flexibility Analysis

Some of the businesses participating in the Urban Enterprise Zone Program are "small businesses," as defined in the New Jersey Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. There may be a positive economic impact upon such small businesses. These amendments and new rules largely pertain to municipalities seeking to participate in the Urban Enterprise Zone program and provide for clearer and more efficient communications or processes. No additional reporting, recordkeeping or compliance obligations on small businesses are imposed beyond what has been added by statute since the current rules were promulgated while other changes will tend to contain or reduce compliance costs through simplification, improved clarity and more certainty of process. The changes proposed are discussed in the Summary above.

Smart Growth Impact

The adoption of the proposed amendments, repeals and new rules would continue a program that provides incentives for economic development in urban areas and would thereby further the implementation of the State Development and Redevelopment Plan and the achievement of smart growth.

Housing Affordability Impact

Since the proposed amendments, repeals and new rules only concern incentives for commercial development in Urban Enterprise Zones, there is an extreme unlikelihood that they would evoke a change in the average costs associated with housing.

Smart Growth Development Impact

Since the proposed amendments, repeals and new rules concern only incentives for commercial development in Urban Enterprise Zones, there is an extreme unlikelihood that they would evoke a change in housing production within Planning Areas 1 and 2 or within designated centers under the State Development and Redevelopment Plan.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at *N.J.A.C. 5:120-2.2, 2.7, 2.8, 2.9 and 2.10, and 5:121-1.2*.

Full text of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 120

URBAN ENTERPRISE ZONE AUTHORITY

SUBCHAPTER 1. URBAN ENTERPRISE ZONE PROGRAM

5:120-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Urban Enterprise Zone Authority (UEZA) to implement *N.J.S.A. 52:27H-60* (P.L. 1983, [ch. 303] **c. 303**), **as amended**, the New Jersey Urban Enterprise Zones Act.

(b) The Act provides for the establishment of an UEZA which is to designate certain areas of the State as Urban Enterprise Zones (UEZ). The Act also provides that the UEZA provide continuing review of the implementation of the Act and report annually to the Governor and the Legislature on the effectiveness of [UEZ's] **UEZs** in addressing the conditions cited in the Act, including any recommendations for legislation to improve the effectiveness of operation of the [UEZ's] **UEZs**.

(c) [Applications and questions] **Questions** concerning [UEZ's] **UEZs** should be directed to:
 Urban Enterprise **Zone** Program
 New Jersey Department of Community Affairs
 [20 West State Street, PO Box 820]
650 South Broad Street, PO Box 822
 Trenton, New Jersey 08625-[0820]**0822**

(d) **Questions concerning applications to become certified or recertified as a "qualified business" (see definition at N.J.A.C. 5:120-1.3) or other questions regarding a particular UEZ should be directed to the Coordinator of the UEZ in the municipality in which the applicant conducts business. A directory of UEZs' contact information shall be maintained on a UEZA webpage within the Department of Community Affairs website.**

[page=2376] 5:120-1.2 Definitions

The following words and terms, when used in this [subchapter] **chapter**, shall have the following meanings unless the context clearly indicates otherwise.

"Act" means the New Jersey Urban Enterprise Zones Act, P.L. 1983, [ch. 303] **c. 303, as amended** (*N.J.S.A. 52:27H-60*).

"Administrator" means the Executive Director of the Urban Enterprise Zone Program in, **but not of**, the New Jersey Department of Community Affairs.

"Authority," "**Zone Authority**" or "UEZA" means the New Jersey Urban Enterprise Zone Authority.

"Certification" means the application process by which a qualified business operating within a zone becomes eligible for zone business benefits for three years, subject to maintaining tax clearance.

"Certified business" or "certified qualified business" is a qualified business that has applied for certification or recertification and that application has been approved by the Administrator.

"Coordinator" means the person, designated by the mayor of the municipality and supported by a resolution of the municipal council, who shall report directly to municipal business administrator and manage the Urban Enterprise Zone office including all matters relating to the application by qualified businesses to enter the program, marketing and promoting the Urban Enterprise Zone program to businesses operating or about to operate within that zone, and such other program related activities as the Administrator shall direct.

"Enterprise [Zone] zone," "**UEZ**" or "[Zone] zone" means an urban enterprise zone designated by the New Jersey Urban Enterprise Zone Authority pursuant to the Act.

"Executive Director" means the title of the person delegated by the Board of the UEZA to managed the operation of the Urban Enterprise Zone Authority, whether by that title or another. Throughout this chapter, the Executive Director is referred to by the functional title of the "Administrator" for consistency with the statute.

"Full-time employee" of a qualified business means an employee subject to tax withholding who works a consistent 30 hours or more per week. (See the definition of "part-time employee" below.)

"NJEDA" or "EDA" means the New Jersey Economic Development Authority, established pursuant to P.L. 1974, c. 80 and amendments thereto.

"Part-time employee" means an employee working a consistent 15 hours or more per week but fewer than 30 hours per week; therefore, for all purposes, one-part time employee shall be considered as one-half full-time employee in all calculations under the program. (See the definition of "full-time employee" above.)

"Qualified business" means any entity authorized to do business in the State of New Jersey which, at the time of designation as an enterprise zone, is engaged in the active conduct of a trade or business in that zone or an entity which, after that designation but during the designation period, becomes newly engaged in the active conduct of a trade or business in that zone, and for which at least 25 percent of its full-time employees (**see the definition of "25 percent factor" below**), newly hired during the [two] **three** years after [issuance of] the business [certificate of occupancy to work at a business location in the zone] **becomes initially certified as a UEZ business**, meet one or more of the following criteria:

1. (No change.)
2. Unemployed for at least [a year] **six months** prior to being hired and residing in New Jersey, or recipients of New Jersey public assistance programs for at least [one year] **six months** prior to being hired; or
3. Determined to be [economically disadvantaged] **low-income individuals** pursuant to the [Jobs Training Partnership Act, Pub. L. 97-300 (29 U.S.C. §§ 1501 et seq.)] **Workforce Investment Act of 1998, Pub. L. 105-220 (29 U.S.C. §2811 et seq.)**.

Approval as a certified qualified business shall be conditioned upon the qualified business meeting all outstanding tax obligations, and may be withdrawn by the Authority if a business is continually delinquent in meeting its tax obligations. A certified business must annually provide, on a form determined by the Division of Taxation and the Administrator, an authorization to verify tax compliance and which form also certifies that the business is a "qualified business."

A qualified business which is a closely-held entity does not cease to be a qualified business due to a change in ownership provided that at least 51 percent or more of the ownership in the successor business continues to be held by the same persons holding an interest in the original business. The successor firm will not have to apply for initial certification and will be permitted to apply for recertification in accordance with its existing schedule.

...

"Qualified small business" is defined as follows:

- 1. For purposes of distinguishing business size by number of employees, means any entity authorized to do business in the State of New Jersey which, at the time of designation of the enterprise zone, had been engaged in the active conduct of a trade or business in that zone for at least one year prior to that designation and which employs fewer than 50 full-time employees.**
- 2. For purposes of determination of eligibility for a small business exemption from sales and use taxes at time of purchase of qualifying items, rather than by rebate, status as a "qualified small business" shall be based on total gross receipts of all related business activity in New Jersey, wherever situated. That limit is set pursuant to P.L. 2008, c. 118, as it may be amended from time to time, and, as of (the effective date of this amendment), is set at \$ 10 million.**

"Recertification" means the process for applying every three years to continue to be eligible for zone business benefits, but the business must submit to tax clearance annually.

"25 percent factor" refers to the requirement that 25 percent of the new employees of a qualified business must meet certain criteria, as stated under the definition "qualified business" above.

"Zone boundary expansion" means a change in the zone boundaries that represents a net increase in the total area within the zone.

"Zone boundary modification" means a change in the zone boundaries that represents no net increase in the area within the zone boundaries.

"Zone boundary revision" means any change in the boundaries of the zone, whether by Zone boundary expansion or by Zone boundary modification.

"Zone business benefits" means those benefits as defined by *N.J.S.A. 52:27H-75 to 52:27H-79*.

...

5:120-1.3 Administrator of the Urban Enterprise Zone Program

(a) The UEZA shall administer the Urban Enterprise Zone Program through an Administrator and sufficient staff and operating procedures to ensure the proper operation of the program.

1. To enable the efficient operation of the Urban Enterprise Zone program, the Administrator shall develop a standard operational manual for use by the zones. It will detail the procedures, file maintenance, personal training and such other matters as the Administrator determines will facilitate that attainment of this objective. The manual shall be submitted to the UEZA Board for consideration and approval, and shall be implemented by the UEZA's field representatives. The standard operational manual shall serve as a guidance document to ensure uniformity, fairness and completeness in the procedures followed throughout the program and will list the documentation necessary for:

i. The zone boundary file, which shall include the approved zone map and zone boundary demarcation and all changes acted on by the UEZA;

ii. Each business's file, which shall contain:

(1) A copy of the certification and recertification applications;

(2) Documentation to substantiate that it is a "qualified business" and the zone's efforts to verify that information;

(3) All correspondence relating to the business;

(4) Copies of deed or lease;

(5) A copy of NJ Business Registration form (so-called "NJ-REG") and UZ-1; and

(6) An activity log for the file;

[page=2377] iii. A copy of each certification and recertification application package processed, with active business files separated from inactive business files in separate file cabinets;

iv. Ethics compliance files to demonstrate full compliance annually with *N.J.S.A. 40A:9-22.1* et seq. (cited as the "Local Government Ethics Law"), and the regulations of the Local Finance Board in the Division of Local Gov-

ernment Services in the New Jersey Department of Community Affairs, which information has been summarized in tabular form and submitted by letter to the Administrator;

v. Files for the established financial status reports and complete documentation for all projects funded through zone assistance funds. which shall include the project proposals, all amendments, bid process documents and bids received, contracts, reimbursement requests and reimbursements received, and all correspondence;

vi. Personnel records and documentation of training for the zone coordinator and zone staff;

vii. Such other matters as may be dictated by statute or other rule; and

viii. Unless a longer period is required by the Open Public Records Act, *N.J.S.A. 47:1A-1* et seq., (OPRA) or other statute, records retention shall be for seven years for accepted certification/recertification applications and all projects, and three years for rejected certification/recertification applications; and a log and file of all OPRA requests shall be maintained as provided by statute.

2. The Administrator shall develop a program for the required annual training of Zone Coordinators and zone staff, to include seminars and workshops throughout the year, to enable them to be in compliance in the operation of a zone. This program shall include a process for structured training and State certification of Zone Coordinators without which certification of the Coordinator the municipality shall not be in compliance and no project proposals, Certification/recertification applications or reimbursements may proceed. This program shall be submitted to the UEZA Board for consideration and approval, and shall be implemented by the Administrator, which shall include the following elements:

i. Eight hours of in-house training annually for all Coordinators by UEZA staff in the conduct of a UEZ office, including the standard operational procedures, documents, files, and related other areas;

ii. All Coordinators and key staff must attend the Coordinators' Workshops conducted periodically during the year by UEZA; and

iii. Coordinators must annually either attend instructional seminars offered by the UEZA consisting of one eight-hour or two four-hour sessions concerning current issues related to the operation of a UEZ; or, with prior approval of the Administrator, participate in one eight-hour or two four-hour training sessions conducted by a New Jersey professional institution of higher education in topics of equivalent relevance to UEZ program. The Administrator shall use the following criteria to determine equivalency:

(1) The course must have been organized and presented under the auspices of a recognized educational or professional institution;

(2) The course shall have included eight hours of class instruction for a full-day course, and four hours of instruction for a half-day course, not counting examinations. (Independent study, video or home study courses shall not be considered);

(3) Registrants in the course must have satisfactorily completed at least one written evaluation;

(4) Satisfactory completion of the course must have been based upon providing correct responses to no less than 70 percent of the questions on the evaluation;

(5) The course was completed within six months of the request for a waiver; and

(6) The content, topics and material of the alternate course shall be essentially the same as that of the required UEZA seminar or a topic relevant to the effective operation of an economic development office.

(7) Individuals requesting a course waiver from the Administrator shall be responsible for the following:

(A) Assuming all costs associated with the waiver;

(B) Obtaining a Waiver Procedures Form from the Administrator; and

(C) Submitting a course description, official transcript or certificate of completion and other required documentation, together with a completed Waiver Procedures Form, to the Administrator for review.

3. To maintain performance standards, the Administrator shall implement the system of sanctions set forth below in this paragraph against a zone which may be implemented by the Administrator. The Administrator shall submit this system of sanctions to the UEZA Board for consideration and approval. The system of sanctions shall include the following:

i. If a municipality changes or deviates from the scope or costs of an approved project without prior approval of the UEZA in accordance with the terms of the project contract, the municipality shall be denied reimbursement and will be solely responsible for the costs.

ii. If a Coordinator violates the standard procedures of the program, the Coordinator shall be sanctioned as follows:

(1) If the Coordinator deviates from program procedures, the Administrator shall have the authority to send a letter of reprimand to the Coordinator, with copies to the mayor and the city council. The Coordinator will have seven business days to submit a written letter of appeal to the Administrator.

(2) If a Coordinator approves and forwards a business' application for certification and it later proves that the business did not meet the stated requirements for certification (subject to appropriation), the local municipality's zone assistance fund will be responsible to make the business whole for taxes and penalties the business is assessed by the Department of the Treasury, Division of Taxation, for any UEZ tax benefits it improperly utilized.

(3) If an otherwise qualified business has become inactive or loses its certification, it is the responsibility of the Coordinator to notify that business by certified mail, return receipt requested, that they are no longer eligible to receive zone business benefits. If the Coordinator fails to so notify the business, and it is determined by the Department of the Treasury, Division of Taxation, that the ineligible business received a benefit they were not entitled to at the time (subject to appropriation), the local municipality's zone assistance fund will be responsible to repay any assessed taxes and penalties in addition to any remedies that the Division of Taxation may pursue.

5:120-[1.3]1.4 Application for zone business benefits

(a) Any business, which desires to receive zone business benefits, shall [forward to the administrator a letter specifying the benefits which it wants to receive, a letter of endorsement from the municipality for the business to receive the benefits, a certification that the business is located in the zone] **submit to the Coordinator of the zone in which the place of business is located, a certification application package, or recertification application package when the business is seeking to continue its participation**, and any other additional information requested by the [administrator] Administrator. The application package shall include the following forms and supporting documentation as appropriate:

1. Procedures and Instructions for Certification or Recertification;

2. Certification, or Recertification, Application form;

3. Employee data sheets for full-time and part-time employees;

4. "Application for Reduced Sales Tax" (Div of Taxation UZ-1);

5. "Application for Exemption from Sales Tax on Purchases of Goods and Materials; for Exclusive Use or Consumption within an Urban Enterprise Zone" (Div of Taxation UZ-5-SB-A);

6. Proof of Business Registration (Business Registration Certificate or an NJ-REG application);

7. "Exempt Sales Tax Tracking Form" for Recertifications; and

8. A copy of the certificate of occupancy, lease and/or deed to substantiate the business location and enable verification that it is within the zone.

5:120-[1.4]**1.5** Time for application for zone business benefits

A business may apply for zone business benefits at any time after the business to be located in the zone agrees with the [administrator] [page=2378] **Administrator** or [his or her] **the Administrator's** designee to provide an increase in permanent full-time employment in the zone.

5:120-[1.5]**1.6** Zone business benefits eligibility

(a) (No change.)

(b) The UEZA, in determining whether a business shall be approved as a qualified business, shall:

1. (No change.)

2. At the time the business applies for qualified business designation under *N.J.S.A. 52:27H-62(c)*, review the business' employee turnover experience for **one year in the instance of certification and** [the two] **three years in the instance of recertification** preceding its application and estimate the number of new positions to be created by the business during the [two] **three** years after the date of its [zone certificate of occupancy] **certification application or recertification application, whichever is appropriate.**

5:120-[1.6]**1.7** Good faith waiver

(a) If the UEZA determines that an applicant for qualified business status or a previously qualified business is unable in good faith to meet the definition of qualified business (see *N.J.A.C. 5:120-1.2*) because an insufficient number of persons satisfying the criteria of *N.J.S.A. 52:27H-62(c)(1)*, (2), and (3), and the workforce requirements of the business are available within the business's geographical area, the UEZA, in its discretion, may reduce the requirement below **the 25 percent factor** for that business conditioned upon the agreement of the business to implement any one or more of the [following] **below-listed actions[:]. Good faith shall include: a letter on the business' letterhead describing the position (including: type of position, salary, job description, number of positions available, list attempts and means business used to fill position locally, results of business' efforts), proof of advertisement for the position(s), a request to New Jersey Department of Labor and Workforce Development for assistance, and such other evidence to support an effort to hire so as to satisfy the 25 percent factor.**

1. Sponsor and fund development and training programs in high schools, vocational or technical schools, or continuing education facilities which serve the zone [city] **municipality** and which primarily develop basic or entry level job skills;

2. Provide summer or part-time jobs for zone [city] **municipality** high school students or graduates;

3. Provide summer internships for zone [city] **municipality** students attending post-secondary, vocational, or technical educational institutions;

4. Design and implement skills training programs in zone [cities] **municipalities**. These programs shall include, but are not limited to:

i.-v. (No change.)

5. Participate in and fund State and federally sponsored job training programs in zone [cities] **municipalities**. These programs shall include, but are not limited to:

i.-iii. (No change.)

6. (No change.)

(b) In determining the extent that a zone business shall be required to implement, sponsor, or fund any of the activities set forth under (a) above, the UEZA shall take into account the business's size as reflected in the number of employees normally, seasonally and currently employed by the business. **To determine whether a business has satisfied the 25 percent factor (as defined in N.J.A.C. 5:120-1.2), the following business and employment size criteria shall be utilized:**

1. Very small businesses. Very small businesses with 0 to five full-time employees may not be required to hire any additional employees;

2. Small businesses. Small businesses with six to 10 employees may be required to hire at least one qualified part-time employee;

3. Larger small business. Larger small businesses with 11 to 49 employees may be required to hire one full-time or two part-time qualified employees to meet the 25 percent factor;

4. Medium and large firms. Businesses with 50 or more employees may be required to hire one full-time employee to meet the 25 percent factor, or implement existing options as otherwise outlined under (a) above.

[(c) A business which is required by the UEZA to implement one or more of the actions enumerated in (a) above in lieu of some portion of the 25 percent requirement of *N.J.A.C. 5:120-1.2* shall:

i. Remain subject to those specified requirements for a period of not less than five years, or such other period of time as may be established by the UEZA in order to fulfill the goals of the Act; and

ii. Consistent with Federal and State law, agree to grant a preference in hiring to persons participating in the activities specified in this section.]

(c) Any good faith waiver granted by the Authority may be suspended, revoked, abridged or otherwise reduced by the Authority upon a showing of good cause by the Administrator. Good cause as used in this subsection shall include economic circumstances of the zone or State which impacts the good faith waiver.

SUBCHAPTER 2. BUSINESS CERTIFICATION FOR ZONE BUSINESS BENEFITS

5:120-2.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Urban Enterprise Zone Authority (UEZA) to implement P.L. 1983, c.303, as amended [by P.L. 1988, c.93], the New Jersey Urban Enterprise Zones Act (the Act), and to implement standards of business certification **and recertification** for zone business benefits. This subchapter [is divided into two parts: the first part which] establishes standards **and procedures** for the recertification of zone businesses [(*N.J.A.C. 5:120-2.3* to *2.6*), and the second part which establishes standards for the conditional recertification of zone businesses (*N.J.A.C. 5:120-2.7* to *2.10*)].

(b) The Act provides for the establishment of an UEZA which is to designate certain areas of the State as Urban Enterprise Zones (UEZ). The Act also provides that the UEZA provide continuing review of the implementation of the Act and report annually to the Governor and the Legislature on the effectiveness of UEZs in addressing the conditions cited in the Act, including any recommendations for legislation to improve the effectiveness of operation of the UEZs.]

(b) This subchapter also governs the alternative procedure when creation of new employment cannot be met, and the appeals process.

(c) Applications and questions **shall be directed as set forth in N.J.A.C. 5:120-1.1(c) and (d).** [concerning UEZs should be directed to:

Urban Enterprise Zone Program
New Jersey Department of Community Affairs
20 West State Street, PO Box 820
Trenton, New Jersey 08625-0820]

5:120-[2.3]2.2 Reapplication for zone business benefits

(a) Any business desiring to continue to receive zone business benefits shall forward to the [Administrator a letter specifying the benefits which it wants to receive, a certification that the business is located in the zone, the amount of full-time employees of the business located within the zone, the amount of full-time employment projected for the next year, actual and projected capital expenditures and any other additional information requested by the Administrator.] **Zone Coordinator a complete recertification application package, upon which the business shall disclose in an accurate manner the requested information, including actual legal name of the business as registered with the State of New Jersey, the trade name of the business, the New Jersey taxpayer identification number (the unique 12-digit number assigned by the Department of the Treasury Division of Revenue), the street address of its actual location within the boundaries of the zone, complete contact information, the amount of full-time and part-time employment located within the zone for each of the three years prior to recertification or one year prior to certification, the amount of full-time and part-time employment and such employment projected for each of the next three years, actual and projected capital expenditure for the same time periods, and any other information as the Administrator shall specify.**

[5:120-2.4] (b) **This subsection concerns [Time] time** for reapplication for zone business benefits.

[(a)] **1.** A business must reapply for zone business benefits no later than [one] **three** years after the prior date of certification, **or recertification**, of that business to receive zone business benefits. **The [page=2379] application is not considered as filed until all required forms and information are accurately and completely provided by the business.**

[(b)] **2.** The Administrator may extend the reapplication period deadline [by no more] **until a date not later** than six months **after the anniversary date of its certification** when the business has demonstrated good faith efforts to produce the information required by the Administrator.

[5:120-2.5] (c) **This subsection sets forth an [Alternative] alternative procedure for recertification by a qualified small business [recertification] when creation of new employment cannot be met.**

[(a)] **1.** A qualified small business desiring to continue to receive zone business benefits may, upon agreement with the governing body of the qualifying municipality in which the enterprise zone is located and subject to the approval of the UEZA, agree to undertake investments in the enterprise zone in lieu of creating new employment. For purposes of this [section] **subsection**, investments in the enterprise zone shall include, but shall not be limited to:

[1.] **i.** Improvements in the exterior appearance or customer facilities of the property constituting the place of business of the qualified **small** business within the zone, provided that:

Recodify existing i. and ii. as **(1) and (2)** (No change in text.)

[iii.] **(3)** The qualified **small** business submits at least one vendor's estimate of the project's costs with its "in-lieu" application; and

[iv.] **(4)** (No change in text.)

Recodify existing 2.-4. as **ii.-iv.** (No change in text.)

[(b)] **2.** In order for an investment to constitute an alternative means by which a **qualified** small business may become recertified as a qualified [zone] **small** business, the investment by that business shall:

Recodify existing 1. and 2. as **i. and ii.** (No change in text.)

[5:120-2.6] **(d) This subsection concerns** [Acceptance] **acceptance** as a recertified qualified [zone] business.

[(a)] **1.** When a business has been granted recertification by the Administrator, the business shall be placed on the qualified [zone] business register. The business shall be eligible for all zone business benefits as determined by UEZA.

[(b)] **2.** Once a business is placed on the qualified business register, it shall be eligible for zone business benefits until its next [annual] **triennial** date of recertification, subject to [N.J.A.C. 5:120-2.4] **(c) above.**

[5:120-2.11] **(e) This subsection concerns** [Denial] **denial** of recertification [or conditional recertification] of a qualified [zone] business.

[(a)] **1.** When a business has been denied recertification [or conditional recertification] by failing to meet the requirements of a "qualified business," and by failing to increase permanent employment in the business, the business may appeal the Administrator's decision.

[(b)] **2.** A business which is denied recertification [or conditional recertification] shall have 10 working days from the date of notification of denial to] **may** submit an appeal **as provided in (f) below.**

[5:120-2.12] **(f) [Procedure] The procedure** for appealing denial of recertification [or conditional recertification] **is as follows:**

[(a)] **1. Within 10 business days after the business has received notification from the Zone Coordinator by certified mail, return receipt requested, [An] an** appeal of denial of recertification [or conditional recertification] shall be made in writing and shall be forwarded to the Administrator by certified mail, return receipt requested.

[(b)] **2.** (No change in text.)

[(c)] **3.** The [New Jersey Department of Community Affairs] **UEZA** shall notify the appealing business of the date, time and place of the review, **which shall be no later than the later of 45 days after the date that the UEZA has received the appeal letter from the business or the date of the second next public meeting of the UEZA Board. The appeal shall be timely noticed as a Board agenda item** and [the right of] the business **has the right** to attend and be represented at the review.

[(d)] **4.** The review will be conducted by [a designee of the Commissioner] **the Board of the UEZA.** The [designee] **Board** shall **decide the appeal and** issue a written report within 10 working days of the [close of the review] **minutes of the meeting becoming final.**

[(e)] **5.** (No change in text.)

[CHAPTER 121

URBAN ENTERPRISE ZONE AUTHORITY POLICIES]

SUBCHAPTER [1.] **3.** URBAN ENTERPRISE ZONE BOUNDARY AMENDMENTS

[5:121-1.1] **5:120-3.1** Applicability and scope

[(a)] The rules in this subchapter are promulgated by the Urban Enterprise Zone Authority (UEZA) to implement P.L. 1983, [ch.] c. 303, **as amended**, the New Jersey Urban Enterprise Zones Act, and to specifically implement the methodology of amending zone boundaries within a municipality.

[(b)] The Act provides for the establishment of the UEZA which is to designate certain areas of the State as Urban Enterprise Zones (UEZ). The Act also provides that the UEZA exercise continuing review and supervision of the implementation of zone development plans.

(c) Applications and questions concerning a UEZ should be directed to:

Urban Enterprise Zone Program
New Jersey Department of Community Affairs
20 West State Street, PO Box 820
Trenton, New Jersey 08625-0820]

[5:121-1.3] **5:120-3.2** Standards of eligibility for zone boundary revisions

(a) A qualified municipality shall be eligible to apply for a revision of the urban enterprise zone within that municipality when:

[1. The proposed boundary revision will not enlarge the geographic area of the existing zone by more than 10 percent;]

1. The area to be included within the boundaries of the revised UEZ satisfies the criteria set forth in N.J.A.C. 5:120-3.6(a); and

2. The expansion and [revision] **modification** of the [zone] UEZ [boundaries will] **boundary**:

i. Will not, as based upon the original zone application by the municipality for designation of a UEZ, significantly alter the percentage within the zone of:

Recodify existing i. and ii. as **(1) and (2)** (No change in text.)

[(iii.) **(3)** Persons receiving public assistance[.]; **and**

ii. Is limited to include areas within the UEZ that will attract or permit the creation of new businesses in the UEZ, although sites adjacent to existing areas within the UEZ may be included to permit continuity of the zone.

[5:121-1.4] **5:120-3.3** Application for zone boundary revisions

(a) A municipality may apply to the Administrator for a zone boundary modification if the total area in the UEZ after the proposed modification will not increase compared to that currently existing.

(b) A municipality may apply to the Administrator for a zone boundary expansion if the area to be added to the UEZ shall not result in the enlargement of the geographic area of the existing UEZ greater than as provided in N.J.A.C. 5:120-3.6(b).

[(a)] (c) Each application for a zone boundary revision shall include an analysis, **in a format established by the Administrator**, of how the proposed zone **boundary** revision will relieve **the following as defined in this subsection**:

1. Economic distress, **meaning conditions affecting the fiscal and economic viability of a community, including such factors as low per capita income, low per capita taxable values, high unemployment, high underemployment, low average weekly earned wages compared to the State average, low housing values compared to the State average, high percentage of the population receiving public assistance, high poverty levels compared to the State average, and a lack of year-round stable employment;**

2. High unemployment, meaning a level of unemployment that is greater than the county average in the previous five years;

3. Low investment of capital, meaning a level of private investment that is lower than the State average or private investment which is concentrated in businesses and/or industries with lower than average wages. Low investment of capital may include a lack of private investment in infrastructure;

[page=2380] 4. Blighted conditions, including land that is vacant or is 'in need of rehabilitation', as that term is defined by statute;

5. Obsolete or abandoned industrial or commercial structures, meaning a delineated area in which a portion of the structures are in a deteriorated or substandard condition and there is a continuing pattern of vacancy, abandonment or underutilization of properties in the area, with a persistent arrearage of property tax payments thereon or a majority of the water and sewer infrastructure in the delineated area is in need of repair or substantial maintenance. In addition, rehabilitating these areas may be expected to prevent further deterioration and promote the overall development of the community; and

6. Deteriorating tax base, meaning an overall decline over the past ten years in the non-residential tax base, commonly referred to as "ratables."

(d) For purposes of this subchapter, the following additional definitions shall apply:

1. "Parcel" shall mean non-residential real property identified by lot and block on the tax map of the qualifying municipality;

2. "Area" shall mean one or more parcels; and

3. "Vacant" or "vacancy" means undeveloped and unused parcels, any non-residential parcels with significant amounts of land not covered by impervious surfaces on site as determined by the UEZA, any land suitable for redevelopment or infill at higher densities and any residential parcels with lot sizes in excess of two acres where environmental factors permit densities.

(e) A proposed zone boundary revision, whether for zone boundary modification or for zone boundary expansion, shall consist of one or more contiguous parcels located within the business district of the qualifying municipality.

[(b)] (f) Each application for a zone boundary revision shall include a rationale for the [boundary change] **proposed zone boundary revision** and an **explanation** why the area to be added, **deleted or included** was not [included] **reflected** in prior [boundary revision] requests **for zone boundary revision and/or** the original application **for designation as a UEZ.**

[(c)] (g) Each application for a zone boundary revision shall be accompanied by a resolution from the municipal governing body [supporting] **granting approval for submission of the request for the proposed zone boundary revision to the UEZA.**

(h) **The Administrator shall evaluate each application for zone boundary revision and shall make recommendation to the UEZA for approval or denial of same.**

[5:121-1.5] **5:120-3.4** Time for zone boundary revisions

(a) A **qualified** municipality in which a [zone] **UEZ** is located may apply for a zone boundary revision five years or more after the original designation date.

(b) No subsequent application for a zone boundary revision may be made for at least five years after the date the UEZA approves a prior zone boundary revision.

[5:121-1.6] **5:120-3.5** [Evaluation] **Procedure for evaluation** of a zone boundary revision application

(a) The Administrator shall evaluate each zone boundary revision application considering the following factors:

1. The likelihood that the areas to be included within the revised boundary will attract significant new business formation within the UEZ;

[1.] **2.** The likelihood that the **zone** boundary revision will alleviate general problems of economic distress within the existing zone [and] **as well as the area** proposed [area] to be [covered under] **included in the zone** boundary revision application;

[2.] **3.** The likelihood that the **zone** boundary revision will help alleviate problems of high unemployment in the municipality and the [zone area] **UEZ;**

[3.] **4.** The likelihood that the **zone** boundary revision will result in investment of new capital in the [zone and the proposed area to be covered under the boundary revision] **UEZ;**

[4.] **5.** Whether the **zone** boundary revision will help alleviate blighted conditions in the [zone and the proposed area to be covered under the boundary revision] **UEZ;**

[5.] **6.** Whether the **zone** boundary revision will aid in modernizing or reoccupation of industrial or commercial structures within the [zone and the proposed area to be covered under the boundary revision] **UEZ;** and

[6.] **7.** The likelihood that the **zone** boundary revision will strengthen and broaden the municipal tax base.

(b) After the Administrator's evaluation is complete, [he or she] **the Administrator** shall forward the **zone boundary revision** application **and the results of the Administrator's evaluation** [for] **to the UEZA[s] for** review, modification, denial, and/or approval.

(c) Notwithstanding the provisions of this subchapter, the Authority may, in its discretion, consider a request for zone boundary revision[s] if it deems the special conditions of the application to be of exceptional merit.

5:120-3.6 Area to be included within zone boundaries

(a) **The area to be incorporated into a UEZ as part of a proposed zone boundary revision must have been zoned Commercial, Industrial or Mixed Use for a period of not less than three years preceding the request for zone boundary revision unless it can be shown to the satisfaction of the UEZA that the re-zoning of the subject parcel(s) within said three-year period was done for a purpose unrelated to the zone boundary revision.**

(b) **A proposed zone boundary expansion shall not enlarge the geographic area of the existing UEZ by more than 10 percent of the total area in the municipality currently zoned as Commercial, Industrial and/or Mixed Use and which does not lie within the zone area; no UEZ existing on (the effective date of this rule) shall, however, be required to decrease its total area comprising said UEZ or to remove any area within the UEZ which is not currently zoned Commercial, Industrial and/or Mixed Use.**

SUBCHAPTER [2.] **4.** DISCRETIONARY EXTENSION OF 50 PERCENT SALES TAX EXEMPTION TO URBAN ENTERPRISE ZONE MUNICIPALITIES

[5:121-2.1] **5:120-4.1** Applicability and scope

[(a)] The rules in this subchapter [are promulgated by] **pertain to the authority of** the Urban Enterprise Zone Authority (UEZA) [to implement P.L. 1983, ch. 303, as amended by P.L. 1988, ch. 93, the New Jersey Urban Enterprise Zones Act, and to specifically implement provisions pertaining to the discretionary power of the UEZA] to extend the 50 per-

cent sales **and use** tax exemption to those urban enterprise zone municipalities which do not currently have such a benefit. **Only such municipalities which meet the requirements of the Act may make an application.**

[(b) The Act provides for the establishment of the UEZA, which is to designate certain areas of the State as Urban Enterprise Zones (UEZs). The Act also provides that the UEZA exercise continuing review and supervision of the implementation of zone development plans.

(c) Applications and questions concerning a UEZ should be directed to:

Urban Enterprise Zone Program
New Jersey Department of Community Affairs
20 West State Street, PO Box 820
Trenton, New Jersey 08625-0820]

[5:121-2.2] **5:120-4.2** Zone municipality application for 50 percent sales tax exemption

(a)-(b) (No change.)

(c) Each application for the 50 percent sales tax exemption shall be accompanied by an analysis of the impact on the other UEZs in the State of New Jersey if the exemption were **to be** granted. The impact analysis shall include, but is not limited to:

1.-4. (No change.)

[page=2381] [5:121-2.3] **5:120-4.3** (No change in text.)

[5:121-2.4] **5:120-4.4** Evaluation [of] **and approval process for an application for** 50 percent sales **and use** tax exemption [municipal application] **to an urban enterprise zone municipality**

(a) The Administrator shall evaluate each municipal application for the 50 percent sales **and use** tax exemption, considering the following factors:

1.-7. (No change.)

(b) (No change.)

(c) The UEZA shall, within 120 days from the completion of the evaluation by the Administrator, review the application of a municipality for the 50 percent sales tax exemption and advise the municipality that:

1.-2. (No change.)

3. The application remains under consideration pending receipt of additional specified [information] **documents.**

SUBCHAPTER 5. ENERGY SALES TAX EXEMPTION PROGRAM

5:120-5.1 Applicability and scope

There was established pursuant to P.L. 2004, c. 65, also known as the Business Retention and Relocation Assistance Act ("BRRAG Act"), a program to grant qualified businesses which engage in manufacturing an exemption from the sales and use tax on electricity and natural gas utilities consumed at the zone location. By P.L. 2008, c. 27, this program was transferred to the New Jersey Economic Development Authority.

5:120-5.2 UEZA eligibility criteria for Energy Sales Tax Exemption Program

(a) **Subject to the provisions of relevant rules of NJEDA, the eligibility criteria include, but are not limited to, the following in scope and definition:**

1. A qualified business which meets requirements including employment levels, manufacturing component of the business, and other requirements, may apply through the NJEDA for the Energy Sales and Use Tax Exemption for UEZ manufacturers.

2. The business must be currently certified in the UEZ program and must submit to tax clearance and such other evaluation as may be established by NJEDA. Upon being notified by the NJEDA of a pending application, the UEZ program shall ascertain the business' status in the UEZ program, and the UEZA or NJEDA shall submit the business' tax release form to the Division of Taxation for the latter to determine whether the business is in tax compliance.

(b) The UEZA and NJEDA shall share information regarding relevant dates, employment, energy consumption and tax savings, as well as copies of approval or denial documents.

(c) All questions regarding the detailed requirements, application procedures and other information concerning the Energy Sales and Use Tax Exemption Program for UEZ Manufacturers should be addressed to the NJEDA through their website: www.njeda.com