§ 959. Responsibilities of the commissioner. The commissioner shall: (a) After consultation with the director of the budget, the commissioner of labor, and the commissioner of taxation and finance, promulgate regulations, which, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis, governing (i) criteria of eligibility for empire zone designation, provided, however, that such criteria be approved by the director of the budget; (ii) the application process; (iii) the certification by the commissioner as to the eligibility of business enterprises for benefits referred to in section nine hundred sixty-six of this article, which shall be governed by criteria including, but not limited to: (1) whether the business enterprise, if certified, is reasonably likely to create new employment or prevent a loss of employment in the zone, (2) whether such new employment opportunities will be for individuals who will perform a substantial part of their employment activities in the zone, (3) whether certification will have the undesired effect of causing individuals to transfer from existing employment with another business enterprise to similar employment with the business enterprise so certified, and transferring existing employment from one or more other municipalities, towns or villages in the state, or transferring existing employment from one or more other businesses in the zone, (4) whether such enterprise is likely to enhance the economic climate of the zone, (5) whether the commissioner of labor establishes that such business enterprise, during the three years preceding the submission of an application for certification, has engaged in a substantial violation or a pattern of violations of laws regulating unemployment insurance, workers compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding; (6) whether such business meets the requirements of the cost benefit analysis as established in paragraph (p) of section nine hundred fifty-seven of this article, and (7) if the commissioner of labor establishes that the business enterprise has been found in a criminal proceeding to have violated, in the previous three years, any of the laws referred to in subparagraph five of this paragraph or regulations promulgated pursuant to such laws, the conditions of any permit issued thereunder, or similar statute,

regulation, order or permit condition of any other government agency, foreign or domestic, such business shall not be certified; provided, however, that a business enterprise that has shifted its operations, or some portions thereof, from an area within New York state not designated as an empire zone or zone equivalent area to an area so designated shall not be certified to receive such benefits except where such shift is entirely within a municipality and has been approved by the local governing body of such municipality or in situations where it has been established, after a public hearing, that extraordinary circumstances exist which warrant the relocation of a business, in whole or part, into an empire zone or a zone equivalent area from another municipality and the municipality from which the business is relocating approves of such relocation; or where such shift in operations is from a business incubator facility operated by a municipality or by a public or private not-for-profit entity which provides space and business support services to newly established firms; and (iv) the decertification by the commissioner, upon the recommendation of the commissioner of labor, so as to revoke the certification of business enterprises for benefits referred to in section nine hundred sixty-six of this article with respect to an empire zone or zone equivalent area upon a finding that the business enterprise has committed substantial violations of laws for the protection of workers including all federal, state and local labor laws, rules or regulations; and (v) the decertification by the commissioner so as to revoke the certification of business enterprises for benefits referred to in section nine hundred sixty-six of this article with respect to an empire zone or zone equivalent area upon a finding of any one of the following: (1) the business enterprise made material misrepresentations of fact on its application for certification or in any of its business annual reports, or the business enterprise failed to disclose facts in its application for certification that would constitute grounds for not issuing a certification; (2) the business enterprise has failed to construct, expand, rehabilitate or operate or invest in its facility substantially in accordance with the representations contained in its application for certification; (3) the business enterprise has failed to create new employment or prevent a loss of employment in the empire zone or zone equivalent area; (4) where applicable, the business enterprise has failed to submit an annual

report after it has applied for zone tax benefits or program assistance based on new hires or investments or failed to submit other information when due; (5) the business enterprise, if first certified pursuant to this article prior to the first day of August, two thousand two, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (6) the business enterprise has failed to provide economic returns to the state in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; or (7) the business enterprise has changed ownership or moved its operations out of the empire zone; said regulations shall provide that whenever any business enterprise is decertified with respect to an empire zone: (A) the date determined to be the earliest event constituting grounds for revoking certification shall be the effective date of decertification; (B) its certified single enterprise, if any, may also be decertified; and (C) the commissioner shall notify the commissioner of taxation and finance that such decertification has occurred, and such notification should include the effective date of such decertification and the zone or zone equivalent area to which such decertification applies; with respect to any business enterprise whose certification has been revoked pursuant to subparagraph five or six of this paragraph, that revocation (I) will be effective for a taxable year beginning on or after January first, two thousand eight and before January first, two thousand nine and for subsequent taxable years, unless the business enterprise is subsequently re-certified pursuant to part 11 of title 5 of the New York state codes, rules and regulations for a business enterprise for which a review is required to be conducted pursuant to subdivision (w) of this section in calendar year two thousand nine, and (II) thereafter will be effective for the taxable year during which the commissioner makes his or her determination (prior to any appeal) to revoke the certification of a business enterprise and for subsequent taxable years;

(b) Receive and review applications for designation of areas as empire

zones;

(c) Analyze and make recommendations to the empire zones designation board for designation of areas as empire zones, provided, however, that all such areas recommended by the commissioner shall meet the requirements of this article;

(d) Review new applications to replace any previously designated empire zone the designation of which has been terminated or withdrawn and file notice of the designation or redesignation of an empire zone or of the revision or termination of such designation with the applicant, the department of taxation and finance, the secretary of state, with the county, city, town or village clerk of each county, city, town, or village, respectively, in which the empire zone is located, with the school district governing body in which the empire zone is located, with the commissioner of taxation and finance and with other state and local entities; provided, however, that such notice shall specify the date such action was taken and shall contain a description sufficient to identify the empire zone, including the names of the abutting streets, roads, highways, bodies of water, or other identifying physical features;

(e) Request, and shall receive from any department, division, board, bureau, commission, agency or public authority of the state such assistance as may be necessary to establish a procedure whereby applications submitted by business entities, community-based organizations, not-for-profit organizations, human service agencies, labor unions and municipal agencies located within an empire zone requesting financial and other assistance provided by state programs, including, but not limited to, capital development, human resource development, business assistance, job training and job placement shall, consistent with federal law, be given priority over applications submitted by entities not located in empire zones;

(f) Establish a priority for the allocation of authority to issue private activity bonds for the benefit of municipalities and business enterprises located or to be located within empire zones;

(g) Coordinate, with the local empire zone administrative board and state agencies and authorities, the provision of business development programs and services for each empire zone in order to stimulate the creation and development of new small businesses, including new small

minority-owned and women-owned business enterprises, and may request and shall receive from any department, division, board, bureau, commission, agency or public authority of the state such assistance as may be necessary;

(h) Coordinate with the comptroller and the commissioner of taxation and finance a linked deposit program. The comptroller and the commissioner of taxation and finance are hereby authorized and empowered to enter into agreements with financial institutions located in or serving the empire zones, to provide for the deposit of funds administered jointly by them in such institutions, at reduced rates of return to the state, in return for commitments by such institutions to businesses of loans of comparable amounts, at reduced interest rates, for business development projects in the zones that will create or preserve jobs;

(i) Assist each local empire zone board in preparing a small business assistance plan as required by section nine hundred sixty-three of this article and coordinate with the local empire zone administrative board and state agencies and authorities the development of small business procurement, export and marketing programs for businesses within the empire zones;

(j) Promulgate regulations, in consultation with the commissioner of labor, for program evaluation and coordinate implementation of an evaluation system, which is capable of compiling and analyzing accurate and consistent information necessary for an assessment of whether statutory objectives and criteria are being met;

(k) Review performance objectives and progress in meeting objectives with zone boards and zone administrative entities as part of the annual administrative contract process;

(l) Assist zone boards and zone administrative entities to effect and implement job training and social services agreements and programs provided for in paragraphs (v), (vi) and (vii) of subdivision (a) of section nine hundred sixty-three of this article and request and receive from any agency or authority of the state such assistance as may be necessary to improve the delivery and coordination of human resource development programs to the zones;

(m) Assist zones in increasing their child care capacity and in planning special care activities, including the provision of technical

assistance by the department in planning for the provision of child care services in the zones;

(n) Coordinate with the department of labor, the state education department, the job training partnership council and agencies of the state the inclusion in annual and biennial plans of such entities strategies for increasing and improving human resource development services on a priority basis, consistent with federal statutory and regulatory requirements, to residents of the zones and employees of zone businesses, including, but not limited to, the governor's plan for coordination and special services of the job training partnership council, the jobs plan and Wagner-Peyser annual plan for services of the department of labor, and the career education state plan of the state education department;

(o) Arrange with the job training partnership council the provision of the workforce investment act funds for use within the zones with the cooperation of the service delivery areas in the governor's plan for coordination and special services;

(p) Subject to the availability of funds, arrange for the allocation and reservation of funds from the infrastructure improvement programs of state agencies and authorities to assist the zones to make public improvements necessary for community, commercial, industrial and tourism development projects in support of zone revitalization;

(q) Systematically enlist other state agencies and authorities to participate in zone programs and projects and in cooperative planning of interagency zone activities in support of zone revitalization efforts;

(r) Recommend for economic development loan and grant programs of the department of economic development, urban development corporation, job development authority, and science and technology foundation special terms and conditions for viable zone projects and programs;

(s) Award preference to be given to applications submitted by or on behalf of zones for entrepreneurial assistance programs under article nine of the omnibus economic development act of nineteen hundred eighty-seven to support the creation of new entrepreneurial development and entrepreneurial support centers;

(t) Coordinate with the urban development corporation the creation of a special category of assistance for zones within the regional economic development partnership program, which will make available economic

development assistance grants for zone programs and activities, including, but not limited to, planning, service coordination, and local institutional capacity building for human resource development necessary for economic revitalization; planning and development of small business incubators; job placement and preparedness programs for zones residents; education and training programs for zone businesses; child care programs and projects supportive of business development; technical assistance for minority and women-owned business development; training for zone officials; business and tourism development and marketing programs; and other innovative programs and activities in support of economic and community development within the zones;

(u) Assist in the development of a plan, in coordination with the health and financial services departments, to assist zones in obtaining affordable employee health insurance for small business enterprises located within the zone;

(v) Approve applications for qualification of a business enterprise as the owner of a qualified investment project or as the owner of a significant capital investment project, as defined in subdivisions (s) and (t), respectively, of section nine hundred fifty-seven of this article. As a condition for approval of such application, the commissioner is authorized to specify certain requirements to be satisfied as a condition for approval of such application as the commissioner deems necessary to ensure that the project will make a substantial contribution to the economic development of this state. An application for qualification of a business enterprise as the owner of a qualified investment must be submitted by December thirty-first, two thousand nine. An application for qualification of a business as the owner of a significant capital investment project as defined in subdivision (t) of section nine hundred fifty-seven of this article, which application is submitted by an entity previously qualified by the commissioner as the owner of a qualified investment project or an entity which is a related person, as that term is defined in section 465(b)(3)(c) of the internal revenue code, to an entity previously qualified by the commissioner as the owner of a qualified investment project, must be submitted by June thirtieth, two thousand eleven. No applications submitted after these dates may be approved; and

(w) Conduct a review during calendar year two thousand nine of all

business enterprises to determine whether the business enterprises should be decertified pursuant to subparagraphs five and six of paragraph (v) of subdivision (a) of this section and the regulations promulgated under this article. After such review, the commissioner shall issue an empire zone retention certificate to each firm that the commissioner determines is not subject to decertification under subparagraphs five and six of paragraph (v) of subdivision (a) of this section. The decertification referred to in subparagraph six of paragraph (v) of subdivision (a) of this section shall be based upon an analysis of data contained in at least three business annual reports filed by the business enterprise. If any business enterprise fails the analysis described in the immediately preceding sentence, or if the commissioner makes the finding described in subparagraph five of paragraph (v) of subdivision (a) of this section, the commissioner shall revoke the certification of such business enterprise pursuant to paragraph (v) of subdivision (a) of this section and as specified herein; provided, however, the commissioner may consider, after consultation with the director of the budget, and in his or her sole discretion, other economic, social and environmental factors when evaluating the costs and benefits of a project to the state and whether continued certification is warranted based on such factors. The commissioner shall provide written notification to such business enterprise of his or her determination to revoke the certification, including the reasons therefor. Such notification shall state that the business enterprise may appeal the determination by sending a written notice to the empire zone designation board of such appeal no later than fifteen business days from the date of the commissioner's revocation notification. Provided that the business enterprise appeals the commissioner's determination within fifteen business days of the commissioner's revocation notification, the business enterprise may present a written submission to the empire zone designation board no later than sixty days following the date the commissioner's revocation notification was sent to the business enterprise explaining why its certification should be continued. The empire zone designation board shall consider the explanation provided by the business enterprise, but shall only reverse the determination to revoke the business enterprise's certification if the empire zone designation board unanimously finds

that there was sufficient evidence presented by the business enterprise demonstrating that the commissioner's finding, with respect to subparagraph six of paragraph (v) of subdivision (a) of this section, was in error, or that, with respect to subparagraph five of paragraph (v) of subdivision (a) of this section, any extraordinary circumstances occurred which would justify the continued certification of the business enterprise.