

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: West Virginia Development Office TITLE NUMBER: 145

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 11

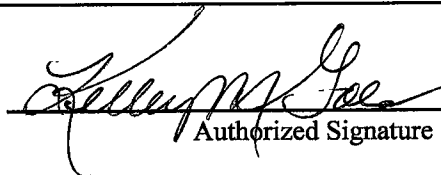
TITLE OF RULE BEING PROPOSED: Brownfield Economic Development Districts

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB2170

SECTION §§64-10-1, PASSED ON April 10, 2009

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: May 1, 2009


Authorized Signature

TITLE 145

PROPOSED LEGISLATIVE RULE

DEPARTMENT OF COMMERCE

DEVELOPMENT OFFICE

SERIES 11

BROWNFIELD ECONOMIC DEVELOPMENT DISTRICTS

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

§ 145-11-1. General.

1.1. Scope. This legislative rule governs the establishment of brownfield economic development districts and establishes the procedures, standards, legal documents, fees and notice applicable to an applicant for the establishment of a brownfield economic development district.

1.2. Authority. – W. Va. Code § 5B-2-6a

1.3. Filing Date. – April 30, 2009

1.4. Effective Date. – May 1, 2009

§ 145-11-2. Definitions.

For purposes of this rule:

2.1. “Applicant” means a person who is applying or has applied to the Director of the Development Office for establishment of a brownfield economic district.

2.2. “Application” means an application for establishment of a brownfield economic development district that is filed with the Director of the Development Office pursuant to W. Va. Code § 5B-2-6a and this rule, which provides all of the information and documentation required by this rule.

2.3. “Application fee” or “fee” means the fee provided for in section four of this rule.

2.4. “Brownfield” means a brownfield as defined in W. Va. Code § 22-22-2.

2.5. “Brownfield economic development district” means a district established by the Director of the Development Office pursuant to W. Va. Code § 5B-2-6a and in accordance with this rule.

2.6. “Compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

2.7. “Control,” means, with respect to a corporation, ownership, directly or indirectly, of stock possessing fifty percent (50%) or more of the total combined voting power of all classes of the stock of the corporation entitled to vote. “Control,” with respect to a trust, means ownership, directly or indirectly, of fifty

percent (50%) or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation of a capital or profits interest in a partnership or association or of a beneficial interest in a trust is determined in accordance with the rules for constructive ownership of stock provided in section 267 (c) of the United States Internal Revenue Code of 1986, as amended, other than paragraph (3) of that section.

2.8. "Department of Commerce" means the Department of Commerce created in the executive branch of state government in W. Va. Code § 5F-1-2(a).

2.9. "Department of Environmental Protection" means the Department of Environmental Protection created in the executive branch of state government in W. Va. Code § 5F-1-2(a).

2.10. "Development Office" means the West Virginia Development Office created in W. Va. Code § 5B-2-1 et seq., which is an agency that is incorporated in and administered as part of the Department of Commerce, as provided in W. Va. Code § 5B-1-2.

2.10.1. "Designee" means any officer or employee of the Director of the Development Office, the Secretary of Commerce or the Secretary of Environmental Protection, duly authorized, directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this rule.

2.11. "Direct jobs" means jobs located in the brownfield economic development district during the construction phase and employment in the district after the project plan is completed.

2.12. "Director" means the "Director of the West Virginia Development Office."

2.13. "Economic development plan" means written and graphic material for provision of a development that at a minimum includes the following information:

- 2.13.1. Name, address and phone number of property owner(s).
- 2.13.2. Name, address and phone number of property developer (if not the owner).
- 2.13.3. Name of development project, date, direction, scale.
- 2.13.4. Date economic development plan was prepared.
- 2.13.5. Name, address and phone numbers of project architect(s), engineer(s) and landscape architect(s).
- 2.13.6. Intended land-use or nature of development.
- 2.13.7. Vicinity map showing general location, surrounding property and major physical features.
- 2.13.8. General layout of property showing shape, approximate dimensions, and total acreage.
- 2.13.9. A conceptual site development plan showing alignment of building(s), what developer anticipates will be the use of the building(s) and any phases of the project, if the project will be done in phases.

2.13.10. A description of the infrastructure that will be provided by the developer.

2.14. "Full-time employee" means a permanent hourly or salary employee who is headquartered at a business location in the brownfield economic development district and who works more than eighteen hundred hours during the entire twelve-month period ending on the last day of the calendar year, whether these hours are hours worked in the district, or include hours of employer paid vacation leave or other employer paid leave. Full-time employee does not include an employee who is a part-time, seasonal or temporary employee.

2.15. "Full-time employment" means employment for at least one hundred forty hours per month at a wage not less than the prevailing state or federal minimum wage, depending on which minimum wage provision is applicable to the business.

2.16. "Indirect jobs" means jobs created in the county in which the brownfield economic district is located that did not exist in the county before completion of the project plan for the district and which are not located or based in the district.

2.17. "Infrastructure" means broadband Internet, electric lines, natural gas or propane lines, water lines, water processing plant, fiber optic telephone lines, sewer lines, sewer disposal facilities, storm water lines, storm water disposal facilities, lighting, and roads located within the brownfield economic development district and any upgrades to existing facilities and roads located outside the district that are necessary to deliver reliable electric, natural gas or propane, telephone, and water to businesses and residents located within the district, and to transmit and treat sewage and storm water generated in the district and the cost of improving roads located outside the district, including, but not limited to, adding turn lanes or lanes, widening lanes, adding traffic signals as may be necessary to minimize congestion to the extent due to economic development and economic activity in the district, and improve public safety. "Infrastructure" does not include customer charges for connection to a utility or charges for the utility service used or consumed by the utility customer.

2.18. "New employee" means a person hired by the developer or other employer located in the brownfield economic district to fill a position or a job in this district which previously did not exist in the developer's or other district employer's business enterprise in this State prior to the date on which the economic development project is placed in service or use in this State. A person is considered to be a "new employee" only if the person's duties in connection with the operation of the business in a brownfield economic development district are on:

2.18.1. A regular, full-time and permanent basis, or

2.18.2. A regular, part-time and permanent basis provided the person is customarily performing the duties at least twenty hours per week for at least six months during the calendar year.

2.19. "New job" means a job which did not exist in the brownfield economic development district in the business of the developer or other employer located in the district prior to the economic development project being placed in service.

2.20. "Own or control the property in the brownfield economic development district" means that the property is owned by the applicant or by a related person as defined in this rule.

2.21. "Part-time employee" means an employee who works less than twenty hours per week.

2.22. "Permanent employee" means any employee who is not a temporary or seasonal employee and who customarily performs his or her duties at least twenty hours per week for at least six months during the calendar year.

2.23. "Person" includes any natural person, corporation, partnership, or entity treated as a partnership for federal and state income tax purposes. For purposes of applying for establishment of a brownfield economic development district, "person" also includes a county, municipality, the West Virginia Economic Development Authority, a county or municipal economic development authority, and the Regional Brownfield Assistance Center established at Marshall University or West Virginia University pursuant to W. Va. Code § 18B-11-7.

2.24. "Related person" means:

24.1. A corporation, partnership, association or trust controlled by the applicant;

24.2. An individual, corporation, partnership, association or trust that is in control of the applicant;

24.3. A corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the applicant; or

24.4. A member of the same controlled group as the applicant.

2.25. "Seasonal employee" means an employee who normally works on a full-time basis less than five months in a year.

2.26. "Secretary of Commerce" means the chief executive officer of the Department of Commerce, or his or her designee.

2.27. "Secretary of Environmental Protection" means the chief executive officer of the Department of Environmental Protection, or his or her designee.

2.28. "Single-family housing" means a single-family dwelling unit on a separate lot that shares no common wall with any other dwelling unit.

2.29. "Significant economic development activity" means:

2.29.1 Total private real and personal property investment in an economic development project that is in excess of fifty million dollars (\$50 million), not including the cost of land, through infrastructure, new construction, reconstruction, installation of fixtures and equipment of the project; and

2.29.2. Creation of additional annual payroll within the district in excess of five million dollars (\$5 million).

2.30. "Site" means the contiguous land owned or controlled by the developer when the application is filed under this rule, comprising fifty (50) acres or more of which at least twenty-five percent (25%) of the site acres are subject to a voluntary remediation agreement entered into with the Secretary of Environmental Protection, as provided in W. Va. Code § 22-22-1 *et seq.*, or were subject to such an agreement and for which

the developer received a certificate of completion issued by the Department of Environmental Protection as provided in W. Va. Code § 22-22-13.

2.31. "Temporary employee" means any employee who is not a permanent employee, a part-time permanent employee, a seasonal employee or a part-time seasonal employee.

2.32. "Voluntary remediation" means a series of measures that are self-initiated by a person to identify and address potential sources of contamination of property and to establish that the property complies with applicable remediation standards that are performed pursuant to a voluntary remediation plan.

2.33. "Voluntary remediation plan" means the remediation work plan approved by the Secretary of Environmental Protection and authorized in the voluntary remediation agreement executed pursuant to W. Va. Code § 22-22-1 *et seq.*

2.34. "West Virginia Code" or "W. Va. Code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

§ 145-11-3. Content of application.

An application for establishment of a brownfield economic development district shall, at a minimum, include the following:

3.1. The applicant's name.

3.2. The applicant's current address.

3.3. The applicant's telephone number, facsimile number and e-mail address.

3.4. The applicant's financial capabilities.

3.5. The name of the proposed brownfield economic development district.

3.6. A general description of the site to be designated a brownfield economic development district, which shall include, at a minimum, the following:

3.6.1. A written description of the site that includes any city, county, and street addresses, and adjacent landmarks, buildings, waterways, former uses or other identifying information.

3.6.2. The deed book number and deed number of the site.

3.6.3. The County tax map references.

3.6.4. Geographic information system data to accurately delineate the voluntary remediation site.

3.6.4.1. All geographic information system location data must have a horizontal accuracy within 12.2 meters (40 feet) in accordance with the U.S. Department of Interior U.S. Geological Survey National Map Accuracy Standards.

3.6.5. Any other identifying information that will serve to clearly and concisely identify the real

estate to be included in the brownfield economic district.

3.6.6. A brownfield economic development district may not include any non-contiguous location or property not owned or controlled by the applicant at the time the application is filed.

3.7. A map showing the boundaries of the brownfield economic development district and showing the proposed economic development in the district.

3.8. Documentation establishing that as of the date of the application the applicant owns or controls all of the land in the proposed brownfield economic development district.

3.9. A time line for completion of the economic development project.

3.10. A traffic study performed by a recognized traffic consultant if (a) the economic development project will directly and indirectly employ more than 200 employees who will work in the district once the economic development project is finished, or (b) if more than 200 individuals will reside in the district once the economic development project is completed, or (c) if any combination of residents and employees exceeds 200 persons in the aggregate.

3.11. A true copy of the economic development concept project plan including an estimated breakdown of project costs, which shall not include the cost to complete the voluntary remediation agreement.

3.12. Documentation of financial ability of the applicant to undertake and complete the proposed economic development project plan or an independent economic feasibility study demonstrating the feasibility of the proposed economic development project.

3.13. If the project infrastructure will tie in to a public or private utility, a letter from the utility or utilities serving the area in which the project is located certifying the following:

3.13.1. They have reviewed and approved all plans and specifications for the project's infrastructure applicable to the utility to determine that the infrastructure conforms to the utility's reasonable requirements and, when the infrastructure consists of water transmission or distribution facilities, that the infrastructure will provide for adequate fire protection for the district; and

3.13.2. If the infrastructure is built in conformance with said plans and specifications, the utility will accept the improvements following their completion.

3.14. If state or local roads adjacent to the brownfield economic development district will need to be upgraded to facilitate ingress and egress from the district, the developer shall pay for the cost of these improvements which shall be evidenced by a letter from the Division of Highways, State Department of Transportation, or the local government entity describing generally the construction work to be done, and that the developer has agreed to reimburse the Department or local government entity for the costs of construction. If the developer will build roads that upon completion will be taken into the state or local road system, the developer shall provide a letter from the Division of Highways or local government entity certifying that if the road(s) is built to standards of the Division of Highways or the local government entity, the road(s) will be taken into the State Road System of the local road system, as the case may be.

3.15. If the utility does not currently have adequate capacity to provide reliable service customers in the

brownfield economic development without significant upgrades or modifications to its treatment, storage, source of supply, or transmission facilities, the applicant must agree to pay the cost of upgrading the utility so that it has adequate capacity to provide the utility service.

3.16. A true copy of the voluntary remediation agreement with the Secretary of the Department of Environmental Protection covering some or all of the land in the proposed district.

3.17. Facts and documents demonstrating that designation of a site as a brownfield economic development district will create significant economic development, as defined in section 2 of this rule, including, but not limited to:

3.17.1. Estimated total number of jobs to be created in the brownfield economic development district.

3.17.1.1. Estimated number of construction jobs over the life of the project.

3.17.1.2. Estimated number of permanent jobs once the project is completed and all buildings are occupied.

3.17.1.3. Estimated number of temporary or seasonal jobs once the project is completed and all buildings to be occupied are occupied.

3.17.1.4. Estimated number of part-time jobs once the project is completed and all buildings are occupied.

3.18. Facts and documents demonstrating that but for designation as brownfield economic development district, the contemplated economic development project would not be possible.

3.19. Facts and documents demonstrating that the economic development project is in the best interest of the State. At a minimum, these facts and documents shall include an economic forecast of:

3.19.1. The additional amount of real and personal property taxes expected to be collected once the economic development project is completed.

3.19.2. The additional state and local taxes the completed project will generate, not including ad valorem property taxes or taxes levied on employees working in the district.

3.19.3. The amount of West Virginia personal income taxes that will be paid by employees working in the district once the project is completed, based on the payroll of the district.

3.20. Facts and documents demonstrating that applicant has attempted to work in good faith with local officials in regard to land-use issues.

3.20.1. A copy of the original land use plan submitted to the local land use officials.

3.20.2. A copy of any and all amended or revised land development plan and plat submitted to the local land use officials, with a cover document highlighting the major difference(s) between each version of the land use plan.

3.20.3. One or more documents showing that the land use plan was rejected by the land use

officials. Examples of these documents include, but are not limited to, a transcript of the public meeting at which the land use plan was rejected, a letter or order signed by the chairman of the land use officials providing reasons why the land use plan was rejected, the affidavit of the applicant or the affiant's attorney stating the affiant's understand of why the land use plan was rejected.

3.21. Facts and documents demonstrating that the applicant is in compliance with the voluntary remediation agreement and that all of the requirements of W. Va. Code § 22-22-1 *et seq.*, as of the date the application for establishment of the brownfield economic development district was filed with the Development Office.

3.22. Ongoing requirement to correct errors or update information in application.

3.23. Other information, as requested by the Director of the Development Office.

§ 145-11-4. Application fee.

4.1. The application fee shall be \$2,500, which amount shall be paid at the time the application is submitted to the Development Office. In the event extraordinary costs are incurred by the Development Office as a result of processing the application, before or after deciding whether to grant or deny the application, the applicant shall reimburse the Development Office for the amount of the extraordinary costs upon receipt of the Development Office's invoice.

4.2. If the application is withdrawn by the applicant before the Development Office begins its review of the application, the application fee shall be refunded to the applicant. If the application is withdrawn after the Development Office has begun review of the application, no portion of the application fee shall be refunded to the applicant.

4.3. If during review of the application the Development Office requests additional information from the applicant that is not provided by the applicant within sixty days of being notified by facsimile transmission or certified mail of the additional information needed and thereafter the information requested is provided, the applicant shall pay a fee of \$2,500 at the time the additional information is provided and the amended application shall be treated as a new application for purposes of this rule.

§ 145-11-5. Time-line for processing application.

5.1. The Development Office shall mark on the application the date it is received by the Development Office.

5.2. The Development Office shall have ninety days after it physically receives a complete application to establish a brownfield economic development district in which to grant the application, deny the application, or request additional information from the applicant. A complete application is one which provides all of the information required by section three of this rule.

5.3. If the application is granted or denied, the Director of the Development Office shall promptly notify the applicant in writing of the decision, which shall be served on the applicant by certified mail, or by facsimile transmission and first class regular mail.

5.4. If the Director requests additional information from the applicant, the request shall be made in

writing and served on the applicant by certified mail, or by facsimile transmission and first class regular mail.

5.5. The applicant shall have sixty days from date of receipt of the request for additional information in which to provide the additional information.

5.6. When the additional information is provided within the applicable sixty-day period, the Director shall have thirty days after physical receipt of the additional information to act on the application or the balance of the original ninety-day period to act on the application, whichever is longer.

5.7. When the additional information is provided subsequent to the applicable sixty-day period, the additional information and the original application shall be treated as a new application, requiring payment of a new application fee, and the Director shall have ninety days from date of receipt of the new application fee in which to act on the application by granting or denying the application or requesting additional information.

§ 145-11-6. Timely filing and paying; performance when last day to act is Saturday, Sunday or legal holiday in this State.

6.1. *Delivery in person.* – If any document required by this rule to be filed with the Director of the Development Office, or any payment required to be made, within a prescribed period or on or before a prescribed date, is delivered in person on or before such date to the Development Office at Charleston, West Virginia, during normal business hours of the Development Office, it shall be timely filed.

6.2. *Timely mailing.* – If any document required by this rule to be filed with the Director of the Development Office, or any payment required to be made within a prescribed period or on or before a prescribed date under authority of this rule, is, after such period or such date, delivered by United States mail to the Director of the Development Office, the date of the United States Postal Service postmark stamped on the cover in which such document or payment is mailed is the date of delivery or the date of payment, as the case may be, provided the following mailing requirements are met:

6.2.1. The postmark date falls within the prescribed period or on or before the prescribed date for filing of the document or for making payment, and

6.2.2. The document or payment was, within the time prescribed in subdivision 6.2.1, deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to Director of the Development Office or the Development Office.

6.3. *Registered and certified mailing.* – For purposes of this section, if any document or payment is sent by United States registered or certified mail, the date of registration or certification is the postmark date.

6.4. *Time for performance.* – When the last day to act falls on a Saturday, Sunday or legal holiday in this State, the act shall be timely if done on the next day that is not a Saturday, Sunday or legal holiday in this State.

§ 145-11-7. Public notices.

7.1. Within fourteen days after receipt of any application for establishment of a brownfield economic development district, the Director of the Development Office shall file a notice in the State Register:

TO WHOM IT MAY CONCERN

Notice is hereby given that _____ filed an application with the Director of the West Virginia Development on _____, 2008, for establishment of the _____ brownfield economic development district. The proposed district consists of _____ contiguous acres located at _____. Included in the application is a plan for economic development of the district, which is generally described as follow:

[Insert brief description of the economic development project, including phases of the project, if any, and the project's estimated cost.]

Interested persons may inspect the application during normal business hours of the West Virginia Development Office in Charleston, West Virginia, to the extent inspection is permitted under the State Freedom of Information Act, W. Va. Code § 29B-1-1 *et seq.*

7.2. Within fourteen days after the Director established a brownfield economic development district or rejects the application for establishment of the district, a copy of the Director's letter or order shall be filed in the State Register.

§ 145-11-8. Criterion for considering application.

The Director of the Development Office shall use the following criterion when determining whether to grant or deny an application for establishment of a brownfield economic development district:

8.1. Criterion for determining whether establishing a brownfield economic development district will create significant economic development, as defined in section two of this rule, in the district include, but are not limited to:

8.1.1. The cost of the economic development project, exclusive of land cost will be greater than ten million dollars.

8.1.2. The estimated number and quality of jobs to be created within the district, including, but not limited to, construction jobs and permanent employment jobs.

8.1.3. The estimated annual payroll of the jobs to be created in the district.

8.1.4. The extent to which the jobs in the district are new jobs as contrasted with the relocation of existing jobs from within this State.

8.1.5. The extent to which the economic development project will support, enhance, and diversify existing business located in the county or region in which the district is located.

8.2. Criterion for determining whether but for designation of the site as a brownfield economic development district the proposed economic development would not be possible include, but are not limited to:

8.2.1. Rejection of the applicant's land use proposal by the local officials who would otherwise need to approve the proposal.

8.2.2 The reason(s) for rejection of the applicant's proposal given by the local land use

officials, if any reason(s) were provided in writing.

8.3. Criterion for determining whether the economic development project is in the best interest of the State include but are not limited to:

8.3.1. The extent to which the new permanent jobs created will be quality jobs that pay high wages and provide good benefits.

8.3.2. The extent to which the district will stimulate and support the growth of new or existing businesses located outside the district but in the county.

8.3.3. The extent to which the district will stimulate and support the growth of new or existing businesses located outside the county but in this State.

8.3.4. The extent to which the district will compete with or compliment existing businesses in the county.

8.3.5. The extent to which the economic development project will, directly, or indirectly, improve the opportunities in the area where the district will be located for the successful establishment or expansion of other commercial or industrial businesses in the county.

8.3.6. The extent to which the economic development project will, directly, or indirectly, assist in the creation of additional employment opportunities in the area where the district will be located.

8.3.7. The extent to which the economic development project will help to diversify the local economy.

8.3.8. Other criteria:

8.3.8.1. The estimated amount of ad valorem property taxes that will be generated annually as a result of the completed project.

8.3.8.2. The estimated state and local taxes, not including ad valorem property taxes, that will be generated annually from businesses activities and employment in the district.

8.3.8.3. The estimated state and local taxes, including ad valorem property taxes, that will be generated annually from businesses activities and employment outside the district that are fairly related to business and other activities in the district.

8.4. Criterion for determining whether the applicant has attempted to work in good faith with local officials in regard to land use include but are not limited to:

8.4.1. The land use plan submitted to local officials.

8.4.2. Any revised land use plan submitted to local officials.

8.4.3. That the land use plan(s) submitted by the applicant was rejected or tabled by the local officials, or the local officials refused to consider the land use plan.

8.5. *Burden of Proof.* – The burden of proof is on the applicant for establishment of a brownfield economic development district to prove by clear and convincing evidence that establishment of the brownfield economic development district is consistent with all of the requirements of W. Va. Code § 5B-2-6a.

§ 145-11-9. Duties of applicant after district is established.

9.1. Upon completion of the economic development plan and plat for the brownfield economic development district, the applicant or any successor to the applicant shall submit the plan and plat to the Director of the Development Office for approval. If the Director finds that the plan and plat are substantially in compliance with the concept plan submitted with the application for establishment of the brownfield economic development district, the Director shall approve the plan and plat for recording by the applicant or any successor to the applicant in the office of the county clerk of the county in which the district is located.

9.2. On or before the first day of the thirty-sixth month following the month in which the brown field economic development district was established by the Director of the Development Office, the project engineer or architect retained or employed by applicant or any successor to the applicant shall certify to the Director that the economic development project remains in substantial compliance with all material provisions of the economic development project concept plan including, but not limited to, the project completion time-line, filed with the application for establishment of the brownfield economic development district and identify any area or area where material changes, if any were made. The seal of the architect or engineer shall be affixed to the certification. This certification shall be made on or before the first day of every eighteen month anniversary thereafter until the project architect or engineer retained or employed by the applicant or any successor to the applicant, certifies, under seal, that eighty percent (80%) or more of the buildings in the economic development project concept plan, based on square footage of space, has been completed. For purposes of this section “substantial compliance” means compliance with the material provisions of the economic development concept plan and the project completion timeline.

9.3. Whenever the applicant or any successor to the applicant fails to comply with the requirements of subsection 9.1 for more than thirty calendar days, the designation of the district as a brownfield economic development district shall automatically be revoked without further action by the Director of the Development Office.

9.4. Whenever the applicant or any successor to the applicant desires to materially change or deviate from the economic development concept plan or the project completion time-line submitted with the application for the brownfield economic development district, the applicant or any successor to the applicant shall apply to the Director of the Development Office for approval of the material change in or deviation from the concept plan at least thirty days before entering into any contract that by itself or in conjunction with one or more other contracts, would result in a material change in or deviation from the economic development concept plan or the project completion time-line. For purposes of this subsection “material change” means a reduction in the aggregate square footage of the buildings proposed in the economic development project concept plan by more than fifteen percent (15%), or a change in the use of a building to a use inconsistent with or a use less desirable than the use or uses described in the concept plan.

9.5. Whenever the applicant or any successor to the applicant fails to comply with the requirements of subsection 9.4, the designation of the district as a brownfield economic development district shall automatically be revoked without further action by the Director of the Development Office.

9.6. Whenever the brownfield economic development district is revoked pursuant to this section, the Director shall promptly notify the applicant or any successor to the applicant in writing of the revocation due to the action or inaction of the applicant or any successor to the applicant. The Director shall send a copy of the notice to the governing body of the local jurisdiction or jurisdictions in which the brownfield economic district was located. The Director's notice shall be served on the applicant or any successor to the applicant and on the governing body by certified mail return receipt requested, or by facsimile transmission and regular mail.

§ 145-11-10. Vested property right; termination.

10.1. When a brownfield economic development district is established as provided in W. Va. Code § 5B-2-6a and this rule, the applicant for the district and any successor to the applicant shall have a vested property right to undertake and complete the approved elements of the economic development project plan.

10.2. Failure to abide by the terms and conditions of this rule or material failure to complete the economic development project concept plan shall result in revocation of the brownfield economic development district as provided in section 9 of this rule and in forfeiture of the right established in this section.

10.3. The vesting period within which the approved elements of the economic development project plan must be completed is three years from the date the brownfield economic development district is established by the Director of the Development Office. This three-year period shall automatically be extended for thirty-six months each time the certification required by subsection 9.2 is filed with the Director of the Development Office and shall become permanent once eighty percent (80%) or more of the buildings in the economic development project plan, based on square footage of space, have been completed, unless the district is sooner terminated, as provided in this rule.

10.4. Revocation of the brownfield economic development district as provided in this rule or expiration of the five year vesting period prior to completion of the economic development concept plan shall not affect the portion of the economic development concept plan completed before the district is revoked or the five-year vesting period expires. Neither of these events shall affect any construction work in progress begun before the district is revoked or the five-year vesting period expires except that this grandfather rule shall not apply to any construction work in progress that is not consistent with the economic development concept plan filed with the application for creation of the brownfield economic development district or any change thereto that has been approved in writing by the Director of the Development Office.

§ 145-11-11. Orders of the Director are final.

The order of the Director of the Development Office establishing a brownfield economic development district is final when issued by the Director except as otherwise provided in this rule for termination of the district due the action or failure to act of the applicant or any successor to the applicant.