

**19:31-12.3 Eligibility**

(a) A business shall be eligible to apply to the program if the Authority finds that the business:

1. Meets the definition of a technology or biotechnology business;
2. Has unused amounts of research and development tax credits and/or unused net operating loss carryover;
3. In the two most recent years of the business, reports negative net or no income or has revenues over expenses of less than 110 percent and is not directly or indirectly 50 percent or greater owned or controlled by another corporation that has positive income in any of the two previous full years of operations as determined on its financial statements or is part of a consolidated group of affiliated corporations, as filed for Federal income tax purposes, that in aggregate has demonstrated positive net income in any of the two previous full years of ongoing operations as determined on its combined financial statements; and
4. Employs fewer than 225 people of which at least 75 percent work in New Jersey.

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (a)3, inserted "or no" following "negative net".

**19:31-12.4 Application to the program**

(a) Each application submitted by a selling business to the program shall be accompanied by a non-refundable application fee as outlined in (a)1 through 3 below. Complete applications must be received by June 30 for each State fiscal year thereafter.

1. New applicants will be required to submit an application with a \$1,000 non-refundable application fee.
2. Re-certification applicants will be required to submit an application with a \$1,000 non-refundable application fee.
3. Returning applicants will be required to submit an application with a \$500.00 non-refundable application fee.

(b) In order for the Department of Treasury, Division of Taxation to issue a certificate, each application submitted to the program shall include: a selling business application which includes the information set forth in (c) below; a spending certification form attesting to having spent the proceeds of the prior year's sale of tax benefits in accordance with the definition of allowable expenditures; a Buying Business Information Sheet which identifies the buying business name, address, telephone number, the estimated value of benefits to be transferred and from whom and a business certification; an agreement between the buying and selling business defining the terms of the sale of the certificate; and the Tax Benefit Identification Form which summarizes the accumulated net operating losses and research and development credits authorized to be sold and

the value intended to be sold. For determination of eligibility for the program, the initial application package shall also include a selling business application and a spending certification form.

(c) In addition to the material specified in (b) above, a completed application shall include, but is not limited to:

1. A description of the nature of the business conducted by the company;
2. A company business plan;
3. Annual consolidated financial statements for the three most recent full years, including balance sheets, operating statements, statements of cash flow and annual company financial statements for the same periods and/or tax returns for the same periods;
4. Net income or loss for the three most recent fiscal years;
5. The number of permanent full time jobs created by the applicant over the course of the two most recent calendar years;
6. A list of all corporations and affiliated groups of corporations that directly or indirectly own or control 50 percent or greater of the selling business and the two most recent full years of financial statements for each;
7. An explanation of the actual or potential scientific and technological viability of the product(s), service(s) and/or process(es) produced in New Jersey;
8. A description of how the innovation of the product(s), service(s) and/or process(es) represents a competitive advantage in the business' field;
9. A description of how the proposed or expanded activities in the State of New Jersey can enhance and diversify the State of New Jersey's capacity and competitiveness in the business' field;
10. A description of efforts made during the past two years to secure any form of financial assistance to support its operations; and
11. Any other supplemental information required by the Authority.

(d) Applications are processed through several layers of staff review and may then be recommended for consideration and official action of the Authority's Board of Directors at its scheduled public meeting.

(e) The Division of Taxation, Department of Treasury separately reviews applicants and may make recommendations regarding program eligibility.

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (a), rewrote the second sentence.

Amended by R.2001 d.242, effective July 16, 2001.

See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (a), deleted "July 28, 1999 for consideration in State FY 00 and by" preceding "June 30"; in (c)3, inserted "and/or tax returns for the same periods" at the end of the paragraph.  
Amended by R.2002 d.254, effective August 5, 2002.

See: 34 N.J.R. 1603(a), 34 N.J.R. 2800(b).

In (c), substituted "three" for "two" in 3, rewrote 4 and 5, deleted former 10 and 11, recodified former 12 as 10 and deleted "and projected two years", and recodified former 13 as 11.

Amended by R.2003 d.297, effective July 21, 2003.

See: 35 N.J.R. 1655(a), 35 N.J.R. 3393(a).

Rewrote (a).

### 19:31-12.5 Evaluation process

(a) When all of the required information is received, the Authority shall perform its own review based on the following minimum criteria:

1. The threshold criteria of eligibility in which the applicant meets the definition of technology business or biotechnology business, and satisfies the standards in N.J.A.C. 19:31-12.3;
2. The actual potential scientific and technological viability of the applicant's business product(s), service(s) and/or process(es) as demonstrated by its:
  - i. Uniqueness of concept;
  - ii. Creditability/plausibility of concept; and
  - iii. Scientific/technological resources of the applicant;
3. The degree to which the innovation of the applicant's product(s), service(s) and/or process(es) created in New Jersey offers a competitive advantage to the business and enhances and diversifies the State of New Jersey's capacity and competitiveness in the business' field;
4. The degree to which the proposed financial assistance will result in significant growth in permanent full-time employment based upon the increase in permanent full time employment in the two most recent calendar years;
5. The financial resources of the applicant including:
  - i. The degree to which the proposed financial assistance demonstrates the prospect of a significant positive change in net income or loss based upon the recent net income or loss trend;
  - ii. Liquidity;
  - iii. Market share; and
  - iv. Ability to access other financial assistance; and
6. Use of the proceeds of the anticipated sale of tax benefits.

(b) After completing its review under (a) above, a preliminary determination shall be made by the Authority as to the merits of the request and its adherence to the statutory requirements of the program. Upon this determination, the applicant will receive notification of preliminary approval that will state the conditions that must be met before the Authority will issue final approval. The notification of preliminary approval will state that the Authority will forward the application to the Division of Taxation only upon receipt of the following:

1. A Buying Business Information Sheet which identifies the buyer, the amount of tax benefits to be sold and the selling price;
2. A Tax Benefit Identification Form on which the applicant lists the amount of tax benefits they wish to sell and the years that the Net Operating Loss's and/or Research and Development tax credits were incurred;
3. A Private Financial Assistance Form specifying how the applicant will expend the private financial assistance for allowable expenditures for the operations of the company;
4. An executed form of the standard selling agreement, with the Private Financial Assistance Form attached as an exhibit; and
5. If the applicant was authorized to sell and did sell tax benefits in the prior year, a spending certification that attests that the applicant spent the proceeds of the prior year's sale of tax benefits in accordance with the prior year's Private Financial Assistance Form.

(c) After approval of the tax benefit by the Division of Taxation as evidenced by the issuance of a tax certificate which will be sent to the Authority, the Authority will issue final approval of the grant and release the tax certificate only upon the receipt of a certificate from the applicant, dated the date of the closing of the sale of the tax benefit certificate that states, among other matters, that:

1. The information in the application form continues to be accurate in all material respects; and
2. As of the date of the certificate, the company is operating as a new or expanding emerging biotechnology or technology business and has no current intention to cease operating as a new or expanding emerging biotechnology or technology business.

Amended by R.2002 d.254, effective August 5, 2002.

See: 34 N.J.R. 1603(a), 34 N.J.R. 2800(b).

In (a), rewrote 4 and 5i.

Amended by R.2002 d.334, effective October 7, 2002.

See: 34 N.J.R. 2414(a), 34 N.J.R. 3531(b).

Rewrote (b) and (c).

### 19:31-12.6 Approval process

(a) Only the members of the Authority can deny an applicant's eligibility in the program.

(b) When the members deny a request, the minutes at which such denial occurs are submitted to the Governor.

(c) The members' action is effective 10 working days after the Governor's receipt of the minutes, provided no veto has been issued.

(d) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. The Authority cannot consider any new information about the project developed after the June 30 submission deadline. Only that information clarifies the application filed shall be reconsidered. In the event the company is reconsidered as eligible, its application shall be presented at the next available Board meeting.

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote the section.

Amended by R.2001 d.242, effective July 16, 2001.

See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (d), rewrote the first sentence.

#### **19:31-12.7 Allocation of tax benefits**

(a) The Program is authorized to provide \$40,000,000 of tax benefits over each fiscal year. In the event the total amount of transferable tax benefits approved exceeds these limitations or any subsequent limitations, the Authority shall allocate the transfer of tax benefits as follows:

1. Each company is limited to a maximum lifetime tax benefit of \$10 million.
2. Businesses with less than \$250,000 in tax benefits will be authorized to sell all of their benefits in the current year.
3. Businesses with more than \$250,000 in tax benefits will be authorized to sell at least \$250,000 of their benefits in the current year. In each successive year in which a selling business reapplies to the program, the applicant will be authorized to sell at least 50 percent of the amount sold in the prior year, with a minimum of \$250,000.