

CHAPTER 31

AUTHORITY ASSISTANCE PROGRAMS

Authority

N.J.S.A. 58:10A-37.1 et seq., specifically 58:10A-37.8.

Source and Effective Date

R.1995 d.435, effective July 20, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Executive Order No. 66(1978) Expiration Date

Chapter 31, Authority Assistance Programs, expires on July 20, 2000.

Chapter Historical Note

Chapter 31, Authority Assistance Programs, Subchapters 1 through 6, was adopted as R.1990 d.410, effective August 20, 1990. See: 22 N.J.R. 1545(a), 22 N.J.R. 2536(a). Subchapter 7, Local Development Financing Fund, was adopted as R.1992 d.421, effective October 19, 1992. See: 24 N.J.R. 2534(a), 24 N.J.R. 3735(a). Subchapter 8, Hazardous Discharge Site Remediation Fund, was adopted as R.1994 d.192, effective April 18, 1994. See: 25 N.J.R. 4468(a), 26 N.J.R. 1706(c). Subchapter 9, New Jersey Boat Industry Loan Guarantee Fund, was adopted as R.1994 d.376, effective July 18, 1994. See: 26 N.J.R. 1613(a), 26 N.J.R. 2919(a).

Pursuant to Executive Order No. 66(1978), Chapter 31 was readopted as R.1995 d.435. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. BOND FINANCING PROGRAM

- 19:31-1.1 Program description
- 19:31-1.2 Bond purchaser
- 19:31-1.3 Bond financing
- 19:31-1.4 Eligibility standards
- 19:31-1.5 Application procedures
- 19:31-1.6 Bond counsel review and fees
- 19:31-1.7 Approval process
- 19:31-1.8 Attorney General review
- 19:31-1.9 Post-closing review

SUBCHAPTER 2. LOAN GUARANTEE PROGRAM

- 19:31-2.1 Program description
- 19:31-2.2 Eligibility standards
- 19:31-2.3 Application procedures
- 19:31-2.4 Evaluation process
- 19:31-2.5 Approval process
- 19:31-2.6 Attorney General review

SUBCHAPTER 3. DIRECT LOAN PROGRAM

- 19:31-3.1 Program description
- 19:31-3.2 Eligibility standards
- 19:31-3.3 Application procedures
- 19:31-3.4 Evaluation process
- 19:31-3.5 Approval process
- 19:31-3.6 Attorney General review

SUBCHAPTER 4. URBAN CENTERS SMALL LOAN PROGRAM

- 19:31-4.1 Program description
- 19:31-4.2 Eligibility standards
- 19:31-4.3 Application procedures

- 19:31-4.4 Evaluation process
- 19:31-4.5 Approval process
- 19:31-4.6 Attorney General review

SUBCHAPTER 5. EXPORT REVOLVING LINE OF CREDIT

- 19:31-5.1 Program description
- 19:31-5.2 Eligibility standards
- 19:31-5.3 Application procedures
- 19:31-5.4 Evaluation process
- 19:31-5.5 Approval process
- 19:31-5.6 Attorney General review

SUBCHAPTER 6. NEW JERSEY TRADE ADJUSTMENT ASSISTANCE CENTER

- 19:31-6.1 Definitions
- 19:31-6.2 Program description
- 19:31-6.3 Eligibility standards
- 19:31-6.4 Application and approval process
- 19:31-6.5 Cost

SUBCHAPTER 7. LOCAL DEVELOPMENT FINANCING FUND

- 19:31-7.1 Applicability and scope
- 19:31-7.2 Definitions
- 19:31-7.3 Application for financial assistance
- 19:31-7.4 Financial assistance
- 19:31-7.5 Terms of financial assistance
- 19:31-7.6 Evaluation of applications
- 19:31-7.7 Minority and women business set-aside plans and requirements
- 19:31-7.8 Rescission of financial assistance from the Fund

SUBCHAPTER 8. HAZARDOUS DISCHARGE SITE REMEDIATION FUND

- 19:31-8.1 Applicability and scope
- 19:31-8.2 Definitions
- 19:31-8.3 Eligibility
- 19:31-8.4 Terms of financial assistance
- 19:31-8.5 Amount of financial assistance and grants
- 19:31-8.6 Priority system for financial assistance and grants
- 19:31-8.7 Application for financial assistance
- 19:31-8.8 Evaluation process for financial assistance
- 19:31-8.9 Approval process for financial assistance
- 19:31-8.10 Disbursement of financial assistance and grants
- 19:31-8.11 Attorney General review
- 19:31-8.12 Fees
- 19:31-8.13 Public record

SUBCHAPTER 9. NEW JERSEY BOAT INDUSTRY LOAN GUARANTEE FUND

- 19:31-9.1 Applicability and scope
- 19:31-9.2 Definitions
- 19:31-9.3 Eligibility
- 19:31-9.4 Terms of guarantees
- 19:31-9.5 Amount of guarantees
- 19:31-9.6 Application procedures
- 19:31-9.7 Evaluation process
- 19:31-9.8 Approval process
- 19:31-9.9 Attorney General review
- 19:31-9.10 Fees

SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM

- 19:31-10.1 Applicability and scope
- 19:31-10.2 Definitions
- 19:31-10.3 Eligibility

19:31-10.4	Amount/term of grant
19:31-10.5	Business expansion or relocation
19:31-10.6	Grant conditions
19:31-10.7	Application procedures
19:31-10.8	Evaluation process
19:31-10.9	Approval process
19:31-10.10	Rescission and withholding of grant payments
19:31-10.11	Prevailing wage
19:31-10.12	Fees
19:31-10.13	Attorney General Review

SUBCHAPTER 11. PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION, UPGRADE AND CLOSURE FUND

19:31-11.1	Applicability and scope
19:31-11.2	Definitions
19:31-11.3	Eligibility
19:31-11.4	Amount and terms of financial assistance and conditional hardship grants
19:31-11.5	Priority system for financial assistance
19:31-11.6	Application for financial assistance
19:31-11.7	Evaluation process for financial assistance
19:31-11.8	Approval process for financial assistance
19:31-11.9	Disbursement of financial assistance
19:31-11.10	Attorney General review
19:31-11.11	Fees
19:31-11.12	Public record

SUBCHAPTER 12. TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM

19:31-12.1	Applicability and scope
19:31-12.2	Definitions
19:31-12.3	Eligibility
19:31-12.4	Application to the program
19:31-12.5	Evaluation process
19:31-12.6	Approval process
19:31-12.7	Allocation of tax benefits

SUBCHAPTER 1. BOND FINANCING PROGRAM

19:31-1.1 Program description

(a) The Authority is empowered to issue tax-exempt and taxable bonds, the proceeds of which can be used to provide low-interest loans to businesses and certain nonprofit organizations to finance projects which provide or maintain employment and/or tax ratables.

(b) Most bond financings are not guaranteed by the Authority or the State, and are payable solely from revenues generated by the project being financed.

(c) The general credit of neither the Authority nor the State is pledged to secure the bonds.

19:31-1.2 Bond purchaser

(a) The applicant shall secure a written commitment from a bond purchaser.

(b) A bond purchaser shall be:

1. A commercial bank or other institutional lender;
2. An underwriter or placement agent;

3. A privately owned entity; or
4. An individual.

(c) A bond purchaser other than a commercial bank or institutional lender must submit an Application to Purchase Bonds, which will be reviewed by the Authority to determine acceptability to purchase a bond. This application includes requests for identification of, or information about:

1. The officers, directors, partners, owners and stockholders of the applicant;
2. Litigation involving the applicant;
3. Applicant's counsel, principal banks of account, and accountant; and
4. Financial statements of applicant.

(d) The bond purchaser establishes the amount, term, interest rate, collateral, etc., for the bond in negotiation with the applicant.

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

Deleted (c), barring bond purchaser from being substantial owner or user of project; and recodified former (d) and (e) as (c) and (d).

19:31-1.3 Bond financing

(a) Typically, the bonds are secured by a loan agreement and a mortgage on project assets.

(b) The funds raised by the bond issue are loaned by the Authority to pay for eligible project costs. The borrower signs an agreement with the Authority pledging to make payments sufficient to cover principal and interest on the bond. This agreement is then assigned to the bond purchaser.

(c) The borrower makes payments directly to the bond purchaser or trustee.

19:31-1.4 Eligibility standards

(a) Generally, to be eligible for bond financing:

1. A project must serve a public purpose; that is, maintain or expand employment in New Jersey, assist in the economic development or redevelopment of a municipality, maintain or increase the tax base of the municipality, and maintain or diversify business and industry in the State; and
2. Applicants must represent to the Authority that they would not proceed with their project in the present time, place, or scope without the Authority's assistance.

(b) The Authority generally will not approve financial assistance to a project involving relocation within New Jersey if the relocation will result in a job loss and/or hardship for the existing employees or if the relocation endangers the maintenance of tax rates in a particular community.

(c) There is no minimum size for borrowings under the program, but loan requests of less than \$750,000 should be carefully reviewed by the applicant to assure that participation in the program is cost effective.

(d) Tax-exempt bonds are subject to the terms and conditions of the Internal Revenue Codes (IRC); therefore, it is

advisable to consult with financial and legal advisors to determine the eligibility of the project.

(e) Taxable bonds issued through the Authority are not subject to the IRC. Loans may be made to borrowers for various projects and purposes including, but not limited to:

1. Office buildings;
2. Healthcare financings;
3. Warehouses and distribution facilities;
4. Manufacturing projects;

5. Commercial and retail projects;
6. Debt refinancing; and
7. Working capital needs.

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

In (d), deleted last sentence, relating to tax exemptions for interest income.

19:31-1.5 Application procedures

(a) A prospective applicant should consult with the Authority to determine if the project is eligible.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project shall be submitted to the Authority for review, together with the Application fee.

(c) The Application includes requests for information about:

1. The applicant's business, including financial statements and projections;
2. The project to be undertaken;
3. The officers, directors, partners, owners and stockholders of the applicant;
4. Litigation involving the applicant;
5. Other users of the project, if applicable;
6. Municipal approvals, if applicable;
7. Contractors, subcontractors, architects, engineers, and planners who will work on the project, if known;
8. Equipment to be purchased as part of the project; and
9. The relocation of any part of the applicant's or user's business, if applicable.

(d) Applications are logged in and assigned a number and project officer for review and processing.

(e) Applications are assigned to a bond counsel firm from the Authority's list of designated bond counsel to review the project for eligibility under Federal and State law (see N.J.A.C. 19:31-1.6). At the time of application, applicants may request assignment of one of the designated bond counsel firms, which request may be approved by the Authority at its discretion.

(f) Applications are processed through several levels of staff review, and may then be recommended for consideration and official action of the Members of the Authority (Members) at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-1.6 Bond counsel review and fees

(a) The Authority is represented in bond transactions by bond counsel, a private law firm with particular experience and expertise in this specialized area of law. The bond counsel firm:

1. Reviews Applications to determine eligibility under Federal and State law;
2. Assists the Authority in drafting the necessary resolutions to be adopted concerning projects;
3. Publishes notice of public hearing;
4. Drafts financing documents to be used in the transaction;
5. Prepares certain Federal forms for filing with the IRS relating to bond financing;
6. Delivers an opinion at the settlement of the transaction indicating, among other things:
 - i. The project qualifies for Authority assistance;
 - ii. The Authority has taken all necessary steps to accomplish the transaction; and
 - iii. The interest income to be earned on the Authority bonds issued for the project is exempt from most Federal and/or State income taxes.

(b) Bond counsel fees are paid by the applicant usually at the closing of the transaction, and may, subject to certain limitations, be included as a project cost to be financed out of the Authority bond issue.

(c) The borrower also is responsible for paying other professional fees associated with financing the project, including, but not limited to:

1. Printing fees;
2. Real estate commissions;
3. Consulting fees; and
4. Bond purchaser counsel fees.

(d) Applicants may be charged a fee by bond counsel even though the project does not close with Authority bonds.

19:31-1.7 Approval process

(a) Only the Members acting at a duly constituted public meeting can authorize or approve assistance to a project. These public meetings will satisfy the requirements for public hearings in accordance with the IRC. The Authority staff is not empowered to authorize or approve such assistance.

(b) The following approvals are required:

1. A preliminary resolution prepared by bond counsel making certain affirmative findings and determinations concerning the eligibility for assistance.

i. Such official action permits an applicant to begin making expenditures on the project without jeopardizing the tax-free eligibility.

ii. If an applicant makes substantial expenditures on a project prior to such official action, the expenditures may not be eligible for tax-free financing. The applicant should consult with bond counsel for advice as to how the IRC applies to expenditures.

iii. A preliminary approval is not by itself sufficient authorization to permit the issuance of bonds;

2. A final bond resolution prepared by bond counsel authorizing bonds to be issued, subject to the following:

i. Receipt of a written commitment acceptable to the Authority from a bond purchaser;

ii. Substantial agreement among the interested parties as to the form and substance of the financing documents; and

iii. Availability under the State volume cap or carry-forward bond allocation for bond financing in accordance with the IRC; and

3. Approval of the Governor.

(c) Bond counsel may prepare a combination resolution granting both preliminary and final bond approval at a single meeting, if the requirements set forth in (b)1 and 2 above have been met.

(d) The bond closing must occur within a specified period of time, usually not exceeding 90 days from the date of final bond approval.

Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

19:31-1.8 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General.

19:31-1.9 Post-closing review

The loan agreement executed with the Authority includes certain public purpose covenants and obligations that must be observed by the applicant during the term of the financing. Failure to comply with these covenants and obligations may result in cancellation of the bond by the Authority.

Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

SUBCHAPTER 2. LOAN GUARANTEE PROGRAM

19:31-2.1 Program description

(a) The Authority is empowered to guarantee a portion of the principal amount of a financing which would increase or maintain employment and/or tax ratables in New Jersey, and which would not be made without the guarantee.

(b) There are three types of guarantees available: Fixed Asset Guarantees, Working Capital Guarantees and Special Guarantees.

1. Under the Fixed Asset Guarantee program:

i. The Authority may guarantee the lesser of \$1.5 million or 90 percent of the principal amount of the financing;

ii. The financing can either be:

(1) A taxable or tax-exempt Authority-issued bond financing (see N.J.A.C. 19:31-1); or

(2) Any other form of financing other than as stated in (b)1ii(1) above, including, but not limited to, bank loans, lease financing, seller take-back financing, Federal take-back financing and financings described in (b)3ii(1) and (2) below ("conventional financing");

iii. Proceeds of guaranteed conventional financing can be used for the acquisition of land, buildings, machinery and equipment, the expansion of an existing building or the renovation of machinery, equipment, and buildings; and

iv. Use of the proceeds of tax-exempt bond financing is governed by the Internal Revenue Code.

2. Under the Working Capital Guarantee program:

i. The Authority may guarantee the lesser of \$1 million or 90 percent of the principal amount of the financing;

ii. The financing can be either a conventional financing or an Authority-issued tax-exempt or taxable bond (see N.J.A.C. 19:31-1), subject to the terms and conditions of the Internal Revenue Code; and

iii. The financing proceeds can be used for refinancing of existing debt, purchase of inventory, or operating expenses.

3. Under the Special Guarantee program:

i. The Authority may guarantee any amount;

ii. The Authority guarantee shall be of:

(1) A loan or guarantee from a governmental entity which may be the Federal or State government, a department of the Federal or State government, an agency of the Federal or State government or a political subdivision of the State of New Jersey;

(2) A loan made under the Community Lending Program of the Federal Home Loan Bank of New York;

(3) Bonds issued by the Authority as a part of a bond issue for the benefit of multiple borrowers (whether or not such bond issue consists of multiple series of bonds issued for the benefit of individual borrowers); or

(4) Conventional financing. An applicant for a conventional financing guarantee shall:

(A) Be in an industry and municipality that is targeted by the Authority as set forth in N.J.A.C. 19:30-5;

(B) Demonstrate to the Authority that it has viable options to vacate the State, has been offered economic incentives by the competing state and that, without the special guarantee, the applicant will not undertake the relocation or expansion in the State; and

(C) Create or maintain a minimum of 200 permanent full-time jobs in the State. The Authority's assistance shall not exceed \$50,000 per job created and/or maintained;

iii. Notwithstanding (b)3ii(4) above, an existing New Jersey company that is not targeted by the Authority as set forth in N.J.A.C. 19:30-5, but can meet the criteria set forth in (b)3ii(4)(B) above shall be eligible for a special guarantee if it can demonstrate that at least 400 permanent full-time jobs will be maintained in New Jersey and the Authority's exposure shall not exceed \$50,000 per job maintained.

(c) Both the Fixed Asset Guarantee and the Working Capital Guarantee have a maximum term of 10 years for the guarantee, although the financing can be for a longer term. A Special Guarantee term shall not exceed the term of the financing.

Amended by R.1997 d.270, effective July 7, 1997.
See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

In (b), substituted "three types" for "two types" and added "and Special Guarantees"; in (b)1ii(1), inserted "Authority issued"; added (b)1ii(2); substantially amended (b)2ii; in (b)iii, substituted "financing proceeds" for "loan proceeds"; inserted (b)3; and in (c), added last sentence.

19:31-2.2 Eligibility standards

(a) Generally, preference for guarantees is given to projects which:

1. Are job intensive;

2. Will create or maintain tax ratables;

3. Are located in an economically distressed area; and/or

4. Represent an important economic sector of the State.

(b) For fixed asset financing guarantees, the applicant will be required to invest at least 10 percent equity into the project.

19:31-2.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project shall be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;

2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;

3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;

4. A current interim statement, if the most recent annual financial statement is more than six months old;

5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;

7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person;

8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements; and

9. A formal commitment letter from the lender providing the loan, including all terms, conditions, collateral, and a statement of the requirement for the Authority guarantee.

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;
2. Aging of accounts receivable;
3. Aging of accounts payable; and/or
4. Any additional information deemed necessary to evaluate the Application.

(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-2.4 Evaluation process

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;
2. An analysis of historic and projected financial statements and a comparison to industry peers;
3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;
4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;
5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;
6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;
7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and
8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing (a) above, a determination is made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financing.

(c) If a positive determination is made, the requested financing is presented to the Members for approval.

19:31-2.5 Approval process

(a) Only the Members can approve a loan guarantee.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant and the bank which will be providing the loan.

1. The commitment letter incorporates the bank's commitment, and contains all terms, conditions and collateral required by the Authority.

2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as collateral assignee.

3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant and the bank, and returned to the Authority, a list of closing instructions is mailed to the attorneys for the applicant and bank.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the guarantee is delivered to the lender.

Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

19:31-2.6 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General's Office.

Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

SUBCHAPTER 3. DIRECT LOAN PROGRAM

19:31-3.1 Program description

(a) The Authority is empowered to make direct loans to applicants which are unable to obtain funding from conventional sources even with the help of an Authority guarantee.

(b) Direct loans are available in a maximum amount of \$500,000 for fixed asset financing and \$250,000 for working capital.

(c) Proceeds of fixed asset loans can be used for the acquisition of land, buildings, machinery and equipment, the expansion of an existing building or the renovation of machinery, equipment, and buildings.

(d) Proceeds of working capital loans can be used for refinancing of existing debt, purchase of inventory, or operating expenses.

(e) Interest on fixed asset and working capital loans is fixed at a rate no less than five percent or the Federal Discount Rate, whichever is greater, and no more than one percent below the highest Prime Rate as published in the Wall Street Journal, at the time of closing. Factors to be considered when establishing an interest rate may include the project's location-municipality, the industry type, the leveraging of total project cost to public dollars, the employment impact to public dollars, whether the business is new to the State or expanding operations in the State and the increase in the tax ratable value.

(f) The term of a fixed asset or working capital loan is a maximum of 10 years, although the repayment schedule is usually for a shorter time based on the applicant's ability to repay.

(g) The Authority may make direct loans in excess of \$500,000 and up to \$2 million for fixed assets. An applicant for a direct loan in excess of \$500,000 shall:

1. Be in an industry and municipality that is targeted by the Authority as set forth in N.J.A.C. 19:30-5 or located in the Port District;
2. Demonstrate to the Authority that it has viable options to vacate the State, has been offered economic incentives by the competing state and, without the special guarantee, the applicant shall not undertake the relocation or expansion in the State; and
3. Create or maintain a minimum of 200 permanent full-time jobs in the State. The Authority's assistance shall not exceed \$50,000 per job created and/or maintained.

(h) Notwithstanding (g) above, an existing New Jersey company that is not targeted by the Authority as set forth in N.J.A.C. 19:30-5, but can meet the criteria set forth in (g)2 above shall be eligible for a direct loan in excess of \$500,000

if it can demonstrate that at least 400 permanent full-time jobs shall be maintained in New Jersey and the Authority's exposure shall not exceed \$50,000 per job maintained.

(i) For purposes of (g) and (h) above, the direct loan term shall not exceed 10 years.

Amended by R.1992 d.126, effective March 16, 1992.
See: 24 N.J.R. 177(b), 24 N.J.R. 970(b).

Revised (e).

Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

Added (g) through (i).

19:31-3.2 Eligibility standards

(a) Generally, preference for direct loans is given to projects which:

1. Are job intensive;
2. Will create or maintain tax ratables;
3. Are located in an economically-distressed area; and/or
4. Represent an important economic sector of the State.

(b) For fixed asset loans, the applicant will be required to invest at least 10 percent equity into the project.

(c) The applicant must demonstrate to the Authority that it is unable to obtain conventional, affordable financing on its own or with the availability of an Authority guarantee.

19:31-3.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project must be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;
2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;
3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;
4. A current interim statement, if the most recent annual financial statement is more than six months old;

5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

3. The project is judged incapable of achieving its target requirement, pursuant to N.J.A.C. 19:31-7.7, or that the project is not employing good faith efforts to achieve the requirements under N.J.A.C. 19:31-7.7; or

4. The participants in the project are found not to be of a good moral character. Such a finding may be based on convictions of felony offenses or any other conduct of the applicant which may be viewed in a nonfavorable light by a reasonable person.

(b) Upon determination of the Authority that financial assistance from the Fund shall be rescinded, the Authority shall send a certified letter to the applicant and the sponsor informing them of the rescission.

SUBCHAPTER 8. HAZARDOUS DISCHARGE SITE REMEDIATION FUND

19:31-8.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement those sections of P.L. 1993, c.139 which pertain to the Hazardous Discharge Site Remediation Fund. This Act established the Hazardous Discharge Site Remediation Fund, a special, revolving fund for the purpose of financing remediation activities at sites at which there is, or is suspected of being, a discharge of hazardous substances or hazardous waste.

19:31-8.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

“Act” means P.L. 1993, c.139.

“Authority” means the New Jersey Economic Development Authority.

“Applicant” means a corporation, partnership, individual or municipal governmental entity which has been determined by the Department to be eligible for financial assistance or a grant.

“Department” means the Department of Environmental Protection and Energy.

“Discharge” shall have the same meaning as set forth at N.J.A.C. 7:26E.

“Eligible project” means a project determined by the Department to be eligible to apply to the Authority to receive financial assistance or a grant from the Hazardous Discharge Site Remediation Fund.

“Financial assistance” means loans and loan guarantees.

“Fund” means the Hazardous Discharge Site Remediation Fund.

“Innocent party” means a person who:

1. Acquired the property prior to December 31, 1983;
2. Who can demonstrate that the hazardous substance or hazardous waste that was discharged at the property was not used by that person, or by any person that had permission to use the site from the person applying for an innocent party grant; and
3. Who can certify that he or any person that had permission to use the site from the person applying for the innocent party grant did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered.

“Members” means the members of the Authority.

“Preliminary assessment” shall have the same meaning as set forth at N.J.A.C. 7:26E.

“Remediation” shall have the same meaning as set forth at N.J.A.C. 7:26E.

“Remediation funding source” means the methods of financing the remediation of a discharge.

“Site investigation” shall have the same meaning as set forth at N.J.A.C. 7:26E.

Amended by R.1994 d.375, effective July 18, 1994.
See: 26 N.J.R. 1612(b), 26 N.J.R. 2918(a).

19:31-8.3 Eligibility

(a) Financial assistance from the fund may be made for eligible projects to:

1. Owners or operators of industrial establishments who are required to perform remediation activities pursuant to P.L. 1983, c.330, as amended, (N.J.S.A. 13:1K-6 et seq.), upon closing operations or prior to the transfer of ownership or operations of an industrial establishment;
2. Persons who have discharged a hazardous substance or who are in any way responsible for a hazardous substance pursuant to P.L. 1976, c.141, as amended, (N.J.S.A. 58:10-23.11 et seq.);
3. Persons who voluntarily undertake the remediation of a discharge of a hazardous substance or hazardous waste, pursuant to the Department's voluntary cleanup program, and who have not been ordered or directed to

perform the remediation by the Department or by a court pursuant to section 27b(3) of the Act; or

4. Municipal governmental entities that own or hold a tax sale certificate on real property on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste pursuant to section 27c of the Act.

(b) No person, other than a municipal governmental entity shall be eligible for Financial Assistance from the Fund to the extent that person is capable of establishing a remediation funding source.

(c) Grants from the fund may be made to:

1. Municipal governmental entities that own or hold a tax sale certificate on real property on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste. These grants may be utilized to perform preliminary assessments and site investigations on these properties; and

2. Persons other than municipal governmental entities who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant pursuant to section 28 of the Act.

(d) The determination of eligibility will be made by the Department in accordance with sections 28 through 31 of the Act.

(e) No financial assistance or grant from the Remediation Fund shall be rendered to a person who is currently in violation of an administrative or judicial order, judgment or consent agreement regarding violation or threatened violation of an environmental law regarding the subject property, unless the violation, fee, penalty or assessment is currently being contested by the applicant in a manner prescribed by law or unless the violation resulted from a lack of sufficient money to perform the required remediation activities.

(f) An applicant for financial assistance or a grant shall certify to the Department and to the Authority that they cannot establish a remediation funding source for all or part of the remediation costs. This requirement does not apply to grants to innocent parties or to financial assistance or grants to municipal governmental entities.

Amended by R.1994 d.375, effective July 18, 1994.
See: 26 N.J.R. 1612(b), 26 N.J.R. 2918(a).

19:31-8.4 Terms of financial assistance

(a) Loans from the Fund or loans guaranteed by the Fund shall be for a term of not more than 10 years.

(b) Interest on loans from the Fund shall be equal to the Federal Discount Rate at the time of approval (see N.J.A.C. 19:31-8.10) or at the time of the loan closing, whichever is lower, with a minimum of five percent.

(c) Upon transfer of ownership of any real estate for which a loan was made from the Fund or a loan was guaranteed by the Fund, the unpaid balance of the loan shall become immediately due and payable.

Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

19:31-8.5 Amount of financial assistance and grants

(a) Financial assistance and grants may be for up to 100 percent of the estimated applicable Remediation Costs, except that the cumulative maximum amount of financial assistance and grants to a person other than a municipal governmental entity in any calendar year, for one or more properties, shall be \$1,000,000.

(b) Financial assistance and grants to any one municipal governmental entity shall not exceed \$2,000,000 in any calendar year.

(c) Grants to an innocent party may be for up to 50 percent of the remediation costs except that no grant may exceed \$1,000,000.

(d) The amount of financial assistance or grant shall be based upon a scope of work for remediation which is in compliance with N.J.A.C. 7:26D, 7:26E, 7:26B and 7:14B as applicable.

19:31-8.6 Priority system for financial assistance and grants

(a) An eligible proposal, as determined by the Department, for financial assistance or a grant from the Fund shall be given priority for financial assistance or a grant by the Authority based on the date of receipt by the Authority of a completed application and the availability of sufficient moneys in the Fund for the purpose of the financial assistance or grant, subject to credit approval by the Authority and other criteria as established by this rule.

1. Availability of sufficient moneys in the Fund will be determined in accordance with the allocation method required by section 28(a) of the Act.

2. The Executive Director of the Authority and the Commissioner of the Department, or their designees, shall, from time to time, review the allocation of moneys in the Fund and the requirements of applicants for money from the fund and reallocate the moneys to the extent permissible under section 28(a) of the Act.

(b) Notwithstanding (a) above, top priority for financial assistance or grants will be given to persons or municipal governmental entities for remediation activities at sites which involve an imminent and significant threat of a discharge of a hazardous substance or hazardous waste and the discharge or threatened discharge poses an imminent and significant threat to a public water source, to human health or to a sensitive and significant ecological area as determined by the Department in accordance with section 28(a)3 of the Act.

19:31-8.7 Application for financial assistance

(a) Upon determination of eligibility by the Department, the Department will notify the Authority of the eligibility of the applicant, and the total amount of remediation costs and the amount of remediation costs for which the applicant is unable to establish a remediation funding source.

(b) The Authority will send an application to the applicant indicating what information is required.

(c) The applicant will be given priority for financial assistance based on the date of receipt by the Authority of a completed application.

(d) If the application is determined by the Authority to be incomplete, the applicant will have 30 days from receipt of written notice of incompleteness to file any additional information required by the Authority.

(e) If the applicant fails to file the additional information within the 30 day period, the filing date for the application shall be the date the additional information is received by the Authority.

(f) A completed application shall include, if applicable as determined by the Authority:

1. A history and description of the applicant's business;
2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;
3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds, or, for an individual, copies of tax returns for the three most recent years.
4. A current interim statement, if the most recent annual financial statement is more than six months old;
5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;
6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;

7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number and contact person;

8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements; and

9. In the case of a loan guarantee, a formal commitment letter from the lender providing the loan, including the terms, conditions, collateral and a statement of the requirement for the Authority guarantee.

(g) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;
2. Aging of accounts receivable;
3. Aging of accounts payable; and/or
4. Any additional information deemed necessary to evaluate the application.

(h) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Authority Members at a public meeting. Within 45 days of the receipt of a completed application, a determination will be made to recommend approval to the Members or deny the application. The applicant has no right to have its application presented to the Members.

Administrative Correction.
See: 26 N.J.R. 2462(b).

19:31-8.8 Evaluation process for financial assistance

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business;
2. An analysis of historic and projected financial statements and a comparison to industry peers;
3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;
4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;
5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended,

the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and

8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing (a) above, a determination shall be made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financial assistance.

(c) If a positive determination is made, the requested financial assistance shall be presented to the members for approval.

19:31-8.9 Approval process for financial assistance

(a) Only the Members can approve a financial assistance or a grant.

(b) When the Members approve financial assistance or a grant, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter, notice of approval of financial assistance, or grant, is issued to the applicant.

1. The notice of approval will contain all terms, conditions and collateral required by the Authority and will include, among other things, that:

i. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as collateral assignee.

ii. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) Within 90 calendar days for a private entity, or within 180 calendar days for a municipal governmental entity, of receipt of the notice of approval of financial assistance or grant application, an applicant shall submit to the Authority an executed contract for the remediation activities for which the financial assistance or grant application was made. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for alteration of the applicant's priority ranking for the awarding of financial assistance or a grant.

(f) When the notice of approval has been accepted by the applicant and returned to the Authority, a list of closing instructions shall be mailed to the attorney for the applicant.

(g) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing shall be scheduled and the funds made available to the applicant and the sponsor subject to approval by the Authority.

Administrative Correction.

See: 26 N.J.R. 2462(b).

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

19:31-8.10 Disbursement of financial assistance and grants

(a) All requests for disbursements of the financial assistance or grant must be submitted by the applicant with a certification from the contractor or consultant that the requested moneys have been spent in accordance within a Department approved scope of work.

(b) The recipient of the financial assistance or grant must provide access, by the Authority and the Department, at reasonable times to the subject property to determine compliance with the terms and conditions of the financial assistance or grant.

(c) In the case of a grant, payment will be conditioned upon the subrogation to the Department of all rights of the recipient to recover remediation costs from the discharger or other responsible party.

(d) Where financial assistance to a person other than a municipal governmental entity is for a portion of the remediation cost, the applicant will be required to provide evidence that all moneys for which a remediation funding source has been established, have been expended, before the proceeds of the financial assistance will be disbursed.

19:31-8.11 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General's Office.

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

19:31-8.12 Fees

(a) Fees for financial assistance will be charged in accordance with the Authority's fee rules (see N.J.A.C. 19:30-6).

(b) A non-refundable application fee of \$500.00 shall accompany every application for a grant.

7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and

8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing (a) above, a determination is made as to the merits of the request, the likelihood of repayment, the adequacy of the collateral available to secure the requested financing and the number of jobs to be created.

(c) If a positive determination is made, the requested financing is presented to the Members for approval.

19:31-9.8 Approval process

(a) Only the Members can approve a loan guarantee.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant and the bank which will be providing the loan.

1. The commitment letter incorporates the bank's commitment, and contains all terms, conditions and collateral required by the Authority.

2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as collateral assignee.

3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant and the bank, and returned to the Authority, a list of closing instructions is mailed to the attorneys for the applicant and bank.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the guarantee becomes effective.

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

19:31-9.9 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General's Office.

Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

19:31-9.10 Fees

Fees for loan guarantees will be charged in accordance with the Authority's fee rules (see N.J.A.C. 19:30-6).

SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM

Authority

N.J.S.A. 34:1B-1 et seq.

Source and Effective Date

R.1996 d.470, effective October 7, 1996.
See: 28 N.J.R. 3058(a), 28 N.J.R. 4510(b).

19:31-10.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1996, c.26. This Act establishes the Business Employment Incentive Program, a special business assistance program to provide grants to businesses located in, or relocating to, New Jersey that create new jobs in New Jersey.

19:31-10.2 Definitions

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

"Act" means the New Jersey Economic Development Authority Act, N.J.S.A. 34:1B-1 et seq. as amended and supplemented.

"Authority" means the New Jersey Economic Development Authority.

"Base years" means the first two complete calendar years following the effective date of an agreement, except that in those instances where significant construction/renovation of the project requires a certificate of occupancy to be awarded prior to occupancy of the project site, the base years will commence upon the issuance of a certificate of occupancy by the municipality.

“Business” means a corporation, sole proprietorship, partnership; Subchapter S-corporation, cooperative association (including financial, stock or commodities exchanges), or any other business entity through which income flows as a distributive share to its owners; limited liability company; a nonprofit corporation; or any other form of business organization located within or outside New Jersey.

“Business Employment Incentive Agreement” or “Agreement” means the written agreement between the Authority and a business which establishes the terms and conditions of a grant to a project which will result in the creation or relocation of new jobs in New Jersey.

“Cooperative association” means financial, stock or commodities exchanges.

“Department” means the Department of Commerce and Economic Development.

“Director” means the Director of the Division of Taxation in the Department of Treasury.

“Division” means the Division of Taxation in the Department of Treasury.

“Eligible position” means a new full-time position created by a business in New Jersey or transferred from another state by the business.

“Employment incentive” means the percentage and term of a grant.

“Full-time employee” means a person who is employed for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.) and who is certified by the applicant to be employed in a permanent position. “Full time employee” shall not include any person who works as an independent contractor or on a consulting basis for the business.

“Grant” means a business employment incentive grant provided by the Authority to eligible businesses based on the withholdings of the New Jersey Gross Income Tax collected by that business annually resulting from eligible positions for new employees.

“New employee” means a full-time employee first employed in an eligible position by a business at the project which is the subject of an Agreement. An out-of-state resident or a resident of New Jersey who is employed outside New Jersey by the business and whose position is relocated to New Jersey after the execution of an Agreement may be classified as a new employee when the position is relocated to New Jersey and the wages are subject to withholdings as provided in the New Jersey Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.); except that such a State resident shall not be classified as a “new employee” unless the wages, prior to the relocation, were subject to income taxes imposed by the state or municipality in which the position was previously located. “New employee” also may include an employee rehired or called back from a bona fide layoff during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years. “New employees” shall not include: any person who was previously employed in New Jersey by the business or by a related person as defined in N.J.S.A. 54:10A-5.5 if the employee is transferred to the business which is the subject of an Agreement unless the employee’s position at his or her previous employer is filled by a new employee; a child, grandchild, parent, or spouse of an individual associated with the business who has direct or indirect ownership of at least 15 percent of the profits, capital or value of the business; and any person whose wages are not subject to new withholding as provided in the New Jersey Gross Income Act.

“Point-of-purchase retail facility” means a business wherein the normal and customary method of patronizing the business conducted at the facility requires the retail consumer to travel to the location to purchase the goods or professional or consumer services of that business. “Point-of-purchase retail facilities” shall not include catalog distribution centers for the purposes of this program.

“Project” means the relocation and/or expansion of a business in New Jersey that is creating new employment opportunities; the wages of which are subject to the provisions of the New Jersey Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.).

“Targeted area” means a qualifying municipality as defined in N.J.S.A. 52:27D-178 which designates certain municipalities as “New Jersey Urban Aid Municipalities” based on a formula established by the Department of Community Affairs.

"Withholdings" means the amount withheld by a business from the wages of new employees pursuant to the "New Jersey Gross Income Tax Act," N.J.S.A. 54A:1-1 et seq.

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

Amended "Eligible position".

19:31-10.3 Eligibility

(a) A business may apply to the Authority for a grant if the Authority finds that:

1. The project proposed by the business shall result in a net increase in new employment at the project during the term of the agreement, and the business shall:

- i. Create at least 75 eligible positions in a non-targeted area in the base years; or
- ii. Create at least 25 eligible positions in a targeted area in the base years;

2. In the case of a business which is a landlord or cooperative association, the landlord or cooperative association may apply to the Authority in one consolidated application for a Business Employment Incentive Grant for any project which creates at least 75 eligible positions in a non-targeted area in the base years, or creates at least 25 eligible positions in a targeted area in the base years, and in which the tenants or members of the cooperative association have agreed to assign to the landlord or cooperative association any claim of right that they may have individually to a grant and have agreed to cooperate with the landlord or cooperative association in providing to the Authority all information required for the initial application, the Agreement and annually thereafter any other information which may be required by the Authority.

i. In the event the tenants or members individually meet the eligibility standards set forth herein, the tenant or member may elect to submit its own application for a grant rather than through its landlord or cooperative association;

3. The project is economically sound and will benefit the people of New Jersey by increasing opportunities for employment and by strengthening the State's economy;

i. The Authority will evaluate the financial statements and projections of the business and the proposed sources and uses of funds to ensure that the proposed project is economically viable; and

4. The Authority determines that the receipt of the business employment incentive grant will be a material factor in the business's decision to go forward with the project.

(b) Projects which consist solely of point-of-final-purchase retail facilities shall not be eligible for a grant.

1. For projects consisting of both point-of-final-purchase retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities shall be eligible for a grant, and only withholdings from new employees which are employed in the portion of the project which represents non-retail facilities shall be used to determine the grant.

2. If warehouse facilities are part of a point-of-final purchase retail facility and the warehouse facilities supply only the retail facility, the warehouse facility shall not be eligible for a grant.

(c) A business which is receiving a Business Relocation Assistance Grant pursuant to P.L. 1996, c.25 shall not be eligible for a Business Employment Incentive Grant, except upon written approval by the State Treasurer.

19:31-10.4 Amount/term of grant

(a) The amount of the business employment incentive grant in each case shall be not less than 10 percent and not more than 80 percent of the withholdings of the eligible positions for new employees.

(b) The following criteria shall be considered when determining the grant amount and term that a business will be eligible to receive:

1. The number of eligible positions created for new employees and the expected duration of those positions;
2. The total number of existing employees of the business;
3. The type of contribution the business can make to the long-term growth of the State's economy;
4. The amount of other financial assistance the business will receive from public sources versus private investment;
5. The total dollar investment the business is contributing to the project;
6. The type of industry that the business is involved in;
7. The location of the project;
8. The type of jobs to be created and the associated wages, with priority given to those companies that create full time positions that average at least 1.5 times the minimum hourly wage; and
9. Such factors as presented by a specific applicant.

(c) The term of a grant may be for a period up to 10 years as approved by the Authority Grant payments shall be issued by the Authority, subject to annual appropriation from the General Fund to the Authority, beginning the next calendar year following achievement of the employment conditions and other conditions set forth in the Agreement and annually thereafter only if the State Treasurer has certified that the amount of withholdings received in the

previous year by the Division from the business equals or exceeds the amount of the grant.

(d) Payment of a grant shall be subject to a certified copy of the business's prior year's payroll categorized by employees not subject to the grant and new employees subject to the grant. The certification shall identify the number of employees in each category, the salary of each employee, the date of hire, and withholding taxes paid for each employee.

1. Upon receipt from the Division Director of a certification of the available withholdings of the new employees and a determination by the Authority that all requirements of the agreement have been met, the Authority shall calculate the annual grant by multiplying the withholdings attributable to eligible positions for new employees by the grant percentage.

2. The grant amount shall be limited to the number new employees represented by the business to be created in the base years at the project site, unless the Authority at the time of the grant agreement authorizes unlimited creation of additional eligible positions to be included in the grant so long as they are filled by new employees. In the event the business creates in excess of the number of eligible positions represented in its application, as provided in the Grant Agreement, the business may be eligible to receive an adjustment in its grant to include the request for consideration of the additional eligible positions.

(e) A business that is receiving any other grant by operation of State law is limited to a Business Employment Incentive Grant which value when combined with the other grants cannot exceed 80 percent of the business's withholdings, except upon the written approval of the State Treasurer. Amounts received as grants from the Office of Customized Training pursuant to N.J.S.A. 34:15D-1 et seq. shall be excluded from the calculation.

(f) A grant received under the Act by a partnership, Subchapter S-corporation, or other such business entity shall be apportioned among the persons to whom the income or profit of the partnership, Subchapter S-corporation, or other entity is distributed, in the same proportions as those in which the income or profit is distributed.

(g) A grant received under the Act by a cooperative association may be apportioned to the members of the association in a manner to be determined by the cooperative association.

Amended by R.1997 d.270, effective July 7, 1997.
See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

Substantially amended (c); in (d), deleted "existing" following "categorized by", and substituted "salary of each employee" for "base salary of each employee and separately any overtime paid during the grant"; in (d)1 and (d)2, substituted "new employees" for "eligible positions"; and in (d)2 substituted "are filled by new employees" for "qualify as full-time" and deleted "in either event" following "the business may".

19:31-10.5 Business expansion or relocation

(a) For businesses that are locating in the State from outside New Jersey, only new employees in eligible positions created in the base years and thereafter may be considered for grant purposes.

1. Upon Authority Board approval, the business's payroll/number of employees shall be registered. Upon occupancy of the project, the business shall have until the end of the base years to achieve the number of employees as represented at application. Only those new employees in eligible positions shall be considered when determining a grant.

2. The business may receive a grant for the new employees in eligible positions represented at application and any additional new employees in eligible positions that are created during the base years and thereafter.

3. Grant payments shall be issued by the Authority subject to annual appropriation from the General Fund to the Authority beginning the next calendar year following achievement of the employment conditions and other conditions set forth in the Agreement and annually thereafter only if the State Treasurer has certified that the amount of withholdings received in the previous year by the Division from the business equals or exceeds the amount of the grant.

(b) For businesses expanding in New Jersey through relocation from an existing site to a new location or expansion at its existing location, only those new employees in eligible positions to be created in the base years and thereafter may be considered when determining a grant. Grant payments shall be issued during the next calendar year upon occupancy of the project and achievement of the employment conditions set forth in the Agreement.

(c) If a business is expanding through a merger with a company, prior to which the company was located outside of New Jersey, only the new employees shall be considered when determining a grant.

Amended by R.1997 d.270, effective July 7, 1997.
See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

In (a), substituted "new employees in eligible positions created in the base years and thereafter may be considered" for "the new employees subject to withholding shall be considered as eligible positions"; in (a)1, substituted "Authority Board approval" for "application to the Authority" and inserted "new" in the third sentence; in (a)2, inserted "new employees in"; substantially amended (a)3; in (b), inserted "new employees"; and in (c), deleted "eligible" following "only the new".

19:31-10.6 Grant conditions

(a) The business shall maintain the project and the required minimum number of eligible positions in New Jersey for at least 1.5 times the number of years of the term of the grant. Businesses which are tenants applying individually to the program may be restricted by the term of their lease.

19:31-10.12 Fees

(a) A non-refundable application fee of \$500.00 shall accompany every application for grant assistance.

(b) An annual servicing fee shall be paid to the Authority by the business and shall be deducted from the annual grant payment to the business. The servicing fee shall be 1.5 percent of the annual grant disbursement with a floor of \$500.00.

Amended by R.1998 d.150, effective March 16, 1998.
See: 29 N.J.R. 5236(a), 30 N.J.R. 1053(b).

In (b), decreased the floor from \$1,500 to \$500.

19:31-10.13 Attorney General review

All documents, including the application, for the program are subject to review by the Attorney General's office.

SUBCHAPTER 11. PETROLEUM UNDERGROUND STORAGE TANK REMEDICATION, UPGRADE AND CLOSURE FUND

Authority

N.J.S.A. 58:10A-37.1 et seq., specifically 58:10A-37.8.

Source and Effective Date

R.1998 d.151, effective March 16, 1998.
See: 29 N.J.R. 5236(b), 30 N.J.R. 1054(a).

19:31-11.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement those sections of P.L. 1997, c.235 (N.J.S.A. 58:10A-37.1 et seq.) which pertain to the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund. This Act established the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, a special revolving fund for the purpose of financing remediation due to the discharge of petroleum from a petroleum underground storage tank or for the costs of upgrade and closure of a regulated tank.

19:31-11.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

“Act” means P.L. 1997, c.235 (N.J.S.A. 58:10A-37.1 et seq.).

“Authority” means the New Jersey Economic Development Authority.

“Applicant” means a corporation, partnership, individual, society, association, consortium, joint venture, commercial entity, county, municipality, or public school district which has been determined by the Department to be eligible for financial assistance or a grant.

“Department” means the Department of Environmental Protection.

“Discharge” means the intentional or unintentional release by any means of petroleum from a petroleum underground storage tank into the environment.

“Eligible owner or operator” means:

1. Any owner or operator other than the owner or operator of a petroleum underground storage tank storing heating oil for onsite consumption in a residential building who owns or operates less than 10 petroleum underground storage tanks in New Jersey, who has a net worth of less than \$2,000,000 and who demonstrates to the satisfaction of the Authority, the inability to qualify for and obtain a commercial loan for all or part of the eligible project costs;
2. The owner or operator of a petroleum underground storage tank storing heating oil for onsite consumption in a residential building; or
3. A public entity who owns or operates a petroleum underground storage tank in New Jersey.

“Eligible project” means a project determined by the Department to be eligible to apply to the Authority to receive financial assistance.

“Eligible project costs” means the reasonable costs for equipment, work or services required to effectuate a remediation, an upgrade or a closure which equipment, work or services are eligible for payment from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund. In the case of an upgrade or closure of a regulated tank, eligible project costs shall be limited to the cost of the minimal effective system necessary to meet all the regulatory requirements of Federal and State law. The limitation of eligible project costs to the minimal effective system shall not be construed to deem ineligible those project costs expended to replace a regulated tank rather than to improve the regulated tank. An owner or operator may perform an upgrade or a closure beyond the minimal effective system in which case the eligible project costs that may be awarded from the fund as financial assistance shall be that amount that would represent the cost of a minimal effective system. In the case of a remediation, eligible project costs shall not include the cost to remediate a site to meet residential soil remediation standards if the local zoning ordinances adopted pursuant to the “Municipal Land Use Law,” P.L. 1975, c.291 (N.J.S.A. 40:55D-1 et seq.) does not allow for residential use. Eligible project costs shall include the cost of a preliminary assessment and site investigation, even if

performed prior to the award of financial assistance from the fund if the preliminary assessment and site investigation were performed after the effective date of the Act. Eligible project costs shall not include the costs of any remediation performed at a site where the petroleum underground storage tank was removed prior to December 1, 1996.

“Facility” means one or more operational or nonoperational petroleum underground storage tanks under single ownership at a common site.

“Financial assistance” means a grant or loan or a combination of both.

“Fund” means the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund.

“Operator” means any person in control of, or having responsibility for, the daily operation of a facility.

“Owner” means any person who owns a facility.

“Petroleum underground storage tank” means a tank of any size, including appurtenant pipes, lines, fixtures, and other related equipment that normally and primarily stored petroleum, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10 percent or more below the ground.

“Public entity” means any county, municipality, or public school district, but shall not include any authority created by those entities.

“Regulated tank” means a petroleum underground storage tank that is required to be upgraded pursuant N.J.S.A. 58:10A-21 et seq. or 42 U.S.C. §§ 6991 et seq.

“Remediation” means all necessary actions to investigate and clean up any known, suspected, or threatened discharge of petroleum, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, as those terms are defined in N.J.S.A. 58:10B-1.

“Upgrade” means the replacement of a regulated tank, the installation of secondary containment, monitoring systems, release detection systems, corrosion protection, spill prevention, or overfill prevention thereof, or any other necessary improvement to the regulated tank in order to meet the standards for regulated tanks adopted pursuant to section 5 of P.L. 1986, c.102 (N.J.S.A. 58:10A-25) and 42 U.S.C. §§ 6991 et seq.

19:31-11.3 Eligibility

(a) Financial assistance from the fund may be made for eligible projects to:

1. Owners or operators of regulated tanks to finance eligible project costs of an upgrade or closure of regulated tanks pursuant to 42 U.S.C. §§ 6991 et seq. or N.J.S.A. 58:10A-21 et seq.;

2. Owners or operators of petroleum underground storage tanks to finance eligible project costs of remediation due to the discharge of petroleum from one or more tanks.

19:31-11.4 Amount and terms of financial assistance and conditional hardship grants

(a) Financial assistance may be for 100 percent of the eligible project costs. Loans for upgrade, remediation or closure, or any combination, for any one facility, shall not exceed \$1,000,000. Grants for any one facility shall not exceed \$250,000. If a combination loan and grant is awarded, the Authority shall release the loan monies prior to the release of the grant monies.

(b) A public entity applying for financial assistance from the fund may only be awarded financial assistance in the form of an interest free loan.

(c) An applicant shall not receive financial assistance from this Fund if assistance was previously made under Hazardous Discharge Site Remediation fund at that site.

(d) The total amount of financial assistance awarded as grants in any one year may not exceed 10 percent of the total amount of financial assistance awarded in that year.

(e) An applicant, other than a public entity, may apply for and receive a conditional hardship grant. In order to be eligible for a conditional hardship grant, the applicant shall:

1. Have owned or operated the subject petroleum underground storage tank as of December 1, 1996 and continually thereafter or shall have inherited the property from a person who owned the petroleum underground storage tank as of that date; and
2. Not have a taxable income of more than \$100,000 or a net worth, exclusive of the applicant's primary residence, of over \$100,000.

(f) A finding of financial hardship by the Authority shall be based on a review of the applicants financial condition and a determination that an applicant cannot reasonably be expected to repay all or a portion of the eligible project costs if the financial assistance were to be awarded as a loan. The amount of an award of a conditional hardship grant shall be the amount of that portion of the eligible project costs the Authority determines the applicant cannot reasonably be expected to repay.

(g) Loans from the fund shall be for a term of not more than 10 years. Interest on loans from the fund shall be equal to an amount fixed between two percent and the prime rate at time of approval, or at the time of closing if the prime rate is lower. The Authority shall determine the interest rate based on the applicant's ability to repay the loan.

(h) If the facility for which the loan was made is sold, the unpaid balance of the loan shall become immediately due and payable in full. Upon the sale of a facility for which a conditional hardship grant was made, the conditional hardship grant shall become immediately payable in full.

19:31-11.5 Priority system for financial assistance

(a) Upon the Authority's approval of an application for financial assistance, the Authority shall award financial assistance upon availability of sufficient monies in the fund. When monies in the fund are not sufficient at any time to fully fund all applications for financial assistance that have been approved by the Authority, the Authority shall award financial assistance to approved applicants, notwithstanding the date of application in the following priority as determined by the Department.

1. Upgrades of regulated tanks required to be upgraded pursuant to 42 U.S.C. §§ 6991 et seq., including necessary remediation at the site of the regulated tank;
2. Closure of any regulated tank required to be upgraded pursuant to 42 U.S.C. §§ 6991 et seq., including necessary remediation at the site of the regulated tank;
3. Upgrades of regulated tanks requiring upgrade pursuant to N.J.S.A. 58:10A-21 et seq. but not pursuant to 42 U.S.C. §§ 6991 et seq. and necessary remediation at the site of the regulated tank;
4. Any necessary remediation at the sites of petroleum underground storage tanks other than those given priority in (a)1, 2 and 3 above;
5. Closure of any regulated tank required to be upgraded pursuant to N.J.S.A. 58:10A-21 et seq., but not pursuant to 42 U.S.C. §§ 6991 et seq.

(b) Notwithstanding the priority for the award of financial assistance, whenever there has been a discharge, and the discharge poses an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area, an approved application shall be given priority over all other applications.

19:31-11.6 Application for financial assistance

(a) Upon determination of eligibility by the Department, the Department shall notify the Authority of the eligibility of the applicant, and the total amount of eligible project costs and the amount of remediation costs for which the applicant is unable to establish a remediation funding source.

(b) The applicant will be given priority for financial assistance based on the date of receipt by the Authority of a completed application.

(c) If the application is determined by the Authority to be incomplete, the applicant shall have 30 days from receipt of

written notice of incompleteness to file any additional information required by the Authority.

(d) If the applicant fails to file the additional information within the 30 day period, the filing date for the application shall be the date the additional information is received by the Authority.

(e) A completed application from a business shall include, if applicable as determined by the Authority:

1. A history and description of the applicant's business;
2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;
3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds, or, for an individual, copies of tax returns for the three most recent years;
4. A current interim statement, if the most recent annual financial statement is more than six months old;
5. Three years of projections, including the balance sheet, operating statement, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;
6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;
7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person;
8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements; and
9. In the case of a loan guarantee, a formal commitment letter from the lender providing the loan, including the terms, conditions, collateral and a statement of the requirement for the Authority guarantee.

(f) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;
2. Aging of accounts receivable;
3. Aging of accounts payable;
4. Submission of documentation or other information on the nature and scope of the work to be performed, cost estimates, and proofs of the actual costs of all work performed;
5. Demonstration of an ability to repay the amount of any loan and to provide adequate collateral to secure the loan; and/or

6. Submission of documentation and a certification as applicable that the applicant was unable to qualify for and obtain a commercial loan for all or part of the eligible project costs.

(g) Within 45 days of the receipt of a completed application, a determination will be made to recommend approval to the members of the Authority or deny the application. The applicant has no right to have its application presented to the members of the Authority.

19:31-11.7 Evaluation process for financial assistance

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

1. Visitation to the applicant's place of business;
2. An analysis of historic and projected financial statements and a comparison to industry peers;
3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard and Poor's Industry Survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;
4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;
5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;
6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;
7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and
8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing (a) above, a determination shall be made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financial assistance.

(c) If a positive determination is made, the requested financial assistance shall be presented to the members of the Authority for approval.

19:31-11.8 Approval process for financial assistance

(a) Only the members of the Authority can approve financial assistance from the Fund.

(b) When the members approve financial assistance, the minutes of the meeting at which such approval occurs are submitted to the Governor.

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

(d) If there has been no veto, a formal commitment letter, notice of approval of financial assistance, shall be issued to the applicant.

1. The notice of approval shall contain all terms, conditions and collateral required by the Authority and will include, among other things, that:

i. Life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's financial assistance. The life insurance must name the Authority as collateral assignee; and

ii. Personal guarantees of owners of 10 percent or more of the applicant are required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees, based on the amount to be loaned.

(e) Within 120 calendar days of receipt of the notice of approval of financial assistance, an applicant shall submit to the Authority an executed contract for the remediation activities for which the financial assistance was approved. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for alteration of the applicant's priority ranking for the awarding of financial assistance.

(f) When the notice of approval has been accepted by the applicant and returned to the Authority, a list of closing instructions shall be mailed to the attorney for the applicant.

(g) When all required documentation is prepared, in form and content satisfactory to the Authority, a closing for financial assistance shall be scheduled and the funds made available to the applicant.

19:31-11.9 Disbursement of financial assistance

(a) All requests for disbursements of the financial assistance shall be submitted by the applicant with a certification from the contractor or consultant that the requested moneys have been spent in accordance with a Department approved scope of work.

(b) The recipient of financial assistance must provide access to the Authority and the Department, at reasonable times, to the subject property to determine compliance with the terms and conditions of the financial assistance or grant.

(c) In the case of a grant, payment shall be conditioned upon the subrogation to the Department of all rights of the recipient to recover remediation costs from the discharger or other responsible party.

(d) Where financial assistance to a person other than a public entity, is for a portion of the remediation cost, the applicant shall provide evidence that all moneys for which a remediation funding source has been established, have been expended, before the proceeds of the financial assistance shall be disbursed.

19:31-11.10 Attorney General review

All financing documents, including the application, are subject to review by the Attorney General's Office.

19:31-11.11 Fees

(a) An application fee shall be charged as follows:

1. \$250.00 for residential tanks per facility;
2. \$500.00 for nonresidential tanks up to six tanks per facility; and
3. \$1,000 for seven or more nonresidential tanks per facility.

(b) An annual surcharge as set forth in (b)1 through 3 below shall be imposed upon the owner or operator of a facility who does not maintain evidence of financial responsibility in accordance with N.J.S.A. 58:10A-25 or pursuant to 42 U.S.C. §§ 6991 et seq., as determined by the Department.

1. Facilities with one or two petroleum underground storage tanks shall pay \$1,500.
2. Facilities with three to six petroleum underground storage tanks shall pay \$3,500.
3. Facilities with more than seven petroleum underground storage tanks shall pay \$6,000.

(c) Payment shall be due within 30 days of receipt of an invoice.

19:31-11.12 Public record

All information submitted to the Department and/or the Authority as part of an application for financial assistance or grant shall be deemed a public record subject to the provisions of N.J.S.A. 47:1A-1 et seq.

SUBCHAPTER 12. TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM

Authority

N.J.S.A. 34:1B-1 et seq., specifically 34:1B-7.44.

Source and Effective Date

R.1999 d.381, effective November 1, 1999.
See: 31 N.J.R. 2522(a), 31 N.J.R. 3525(a).

19:31-12.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1997, c.334. This Act establishes a corporation business tax benefit certificate transfer program to assist new or expanding emerging technology and biotechnology companies in New Jersey.

19:31-12.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Allowable expenditures" means costs incurred in connection with the operation of the new or expanding emerging technology or biotechnology company in the State, including, but not limited to, the expenses of fixed assets, such as the construction, acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures.

"Authority" means the New Jersey Economic Development Authority.

"Biotechnology" means the continually expanding body of fundamental knowledge about the function of biological systems from the macro level to the molecular and subatomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to the body of fundamental knowledge.

"Biotechnology business" means an emerging company that has a headquarters or base of operations located in New Jersey and is engaged in the research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes, or a corporation that has a headquarters or base of operations located in New Jersey, and that is engaged in providing services or products necessary for such research, development, production, or provision.

"Buying business" means a business with the financial ability to purchase the unused net operating loss carryover and/or unused research and development tax credits from an unaffiliated selling business. For the purpose of this definition, the test of affiliation is whether the same entity directly or indirectly owns or controls five percent or more of the voting rights or five percent or more of the value of all classes of stock of both the selling and buying businesses.

“Certificate” means the certificate issued by the Division of Taxation certifying to the selling business amounts of unused net operating loss carryover and/or unused research and development tax credit carryovers.

“Net operating loss” means the excess of the deductions over the gross income used in computing entire net income in a specific year without regard to the net operating loss carryover to that year and the dividend exclusion, as provided in N.J.S.A. 54:10A-4(k)(6)(C).

“New or expanding” means a technology or biotechnology company that has fewer than 225 employees of whom at least 75 percent are employed in New Jersey.

“Program” means the Technology Business Tax Certificate Transfer Program.

“Research and development tax credits” means a tax credit against corporation business tax liabilities for taxpayers who have performed qualified research activities in New Jersey, calculated in the manner as the Federal tax credit for increasing research activities. The credit is based on qualified expenditures in New Jersey beginning on or after January 1, 1994. It provides a credit of 10 percent of the excess qualified research expenses over a base amount plus 10 percent of the basic research payments. Taxpayers must complete New Jersey Division of Taxation—Corporate Business Tax Form 306 to claim their credit. The amount of credit claimed for any single tax year cannot exceed 50 percent of that year’s tax liability prior to the consideration of this credit and it cannot reduce the tax liability below the statutory minimum, as set forth in N.J.S.A. 54:10A-5.24.

“Selling business” means a new or expanding technology and/or biotechnology business that has unused net operating loss carryover and/or unused research and development tax credits which it wishes to “sell.”

“Technology business” means an emerging business, that has a headquarters or base of operations located in New Jersey, and that employs some combination of the following: highly educated and/or trained managers and workers employed in New Jersey who use sophisticated scientific research, service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a product or service.

“Unused net operating loss carryover” means net operating loss for any tax year ending after June 30, 1984 shall be a net operating loss carryover to each of seven years following the loss. The amount of net operating loss for any taxable year shall be carried to the earliest taxable year. The portions of loss which shall be carried is the excess, if any, of the amount of the loss over the sum of the entire net income, computed without regard to the dividend exclusion, as provided in N.J.S.A. 54:10A-4(k)(6)(B).

“Unused research and development tax credits” means the amount of tax credit otherwise allowable which cannot be applied because it would reduce the tax liability below 50 percent of the liability prior to consideration of the credit or it reduces the tax below the statutory minimum, as provided in N.J.S.A. 54:10A-5.24(b).

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 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.

19:31-12.4 Application to the program

(a) Each application submitted by a selling business to the program shall be accompanied by a nonrefundable \$500.00 application fee. Complete applications must be received by July 28, 1999 for consideration in State FY 00 and by June 30 for each State fiscal year thereafter.

(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 two most recent full years, including balance sheets, operating statements, statements of cashflow and annual company financial statements for the same periods;
4. Net income projections for the year prior to application, the current year and the year after application;
5. Employment creation projections for the year of application and the next two 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 how the proceeds of the sale of the tax benefits can result in a significant increase in permanent, full-time employment in the State of New Jersey;
11. A description of how the proceeds of the sale of the tax benefits will result in a high rate of return on investment as expressed in increases anticipated in net income;
12. A description of efforts made during the past two years and projected two years to secure any form of financial assistance to support its operations; and
13. 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.

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 anticipated increase in permanent full-time employment resulting from the sale of the tax benefit;
5. The financial resources of the applicant including:
 - i. Projected change in net income;
 - 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 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, if the applicant was authorized to sell and did sell tax benefits in the prior year, a spending certification is reviewed and a determination that the agreement is in conformance with the requirements of the program.

(c) If a positive determination is made, the requested approval is forwarded to the Division of Taxation for review.

19:31-12.6 Approval process

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

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

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

19:31-12.7 Allocation of tax benefits

(a) The program is authorized to provide \$50 million of tax benefits over State fiscal year 2000 and \$40 million of tax benefits over each fiscal year thereafter. 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.

4. After the dollars are set aside in the amounts provided in (a)2 and 3 above, the remaining funds available to the program, in that fiscal year, shall be allocated among the businesses with more than \$250,000 of tax benefits. The available tax benefits shall be determined by reducing the amount of tax benefits to be transferred for each business by the minimum amount of tax benefits authorized for that business and then multiplying that amount by the following factor:

$$\frac{\text{Fiscal Year Dollar Authorization—}}{\text{Total Minimum Tax Benefits Authorized}} \div \frac{\text{Total Tax Benefits Requested to be Transferred—}}{\text{Total Minimum Tax Benefits Authorized}}$$

The total minimum tax benefits authorized is the amount authorized for businesses with less than \$250,000 of tax benefits plus the minimum tax benefits authorized for businesses with more than \$250,000 of tax benefits. The total tax benefits requested to be transferred is the total amount of tax benefits requested to be transferred by all businesses.

(b) In the event the authorized minimums exceed the authorized annual cap, applications shall be allocated benefits with priority given to those applicants with less than \$250,000 in tax benefits and to businesses with more than \$250,000 in tax benefits that are reappllying to the program pursuant to (a)3 above.