

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 \$750,000 for fixed asset financing and \$500,000 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) Except as indicated in this subsection, interest on fixed asset and working capital loans is at a rate no less than three 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 approval. The interest rate will be variable, adjusted on the first business day of each calendar quarter in accordance with the relationship of the original calculated interest rate to Prime Rate or the Federal Discount Rate at the time of approval. The maximum increase in the variable interest rate over a five year period will be five percentage points greater than the original calculated interest rate. Factors to be considered when calculating the interest rate may include the project's location—municipality, whether the applicant is locating to a former brownfield site, the industry type, the leveraging of total project costs to public dollars, the employment impact to public dollars, whether the business is new to the State or expanding operation in the State, and the increase in tax ratable variables. The Loans to Lenders component of the fund for Community Economic Development will charge an interest rate to be fixed at three percent for the first five years. For those loans that extend beyond five years, the rate will adjust to four percent on the first day of the sixth year. For those loans that extend beyond seven years, the rate will adjust to five percent on the first day of the eighth year. The maximum term of a Loans to Lenders Loan will be 10 years. The rate to be charged for the Seed Capital Program is fixed at approval at the Federal Discount Rate with a floor of three percent.

(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 \$750,000 and up to \$2 million for fixed assets. An applicant for a direct loan in excess of \$750,000 shall:

1. Be in an industry or 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 \$750,000 if it can demonstrate that at least 400 permanent full-time jobs shall be maintained in New Jersey and the Authority's exposure shall 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).

Amended by R.2000 d.297, effective July 17, 2000.  
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (g)1, substituted "or" for "and" following "industry".  
Amended by R.2001 d.242, effective July 16, 2001.

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

In (b), substituted "\$750,000" for "\$500,000" and "\$500,000" for "\$250,000"; in (g) and (h), substituted "\$750,000" for "\$500,000".  
Amended by R.2002 d.223, effective July 15, 2002.

See: 34 N.J.R. 1247(a), 34 N.J.R. 2469(a).

Rewrote (e).

Amended by R.2002 d.333, effective October 7, 2002.  
See: 34 N.J.R. 2412(a), 34 N.J.R. 3531(a).

Rewrote (e).

### 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.

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

#### 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, a partnership or limited liability company in New Jersey or transferred from another state by the business.

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

“Estimated tax” means an amount calculated for a partner in an eligible position equal to 6.37 percent of the lesser of:

1. The amount of the partner’s net income from the eligible partnership that is sourced to New Jersey as reflected in Column B of the partner’s Schedule NJK-1 of the application year less the amount of the partner’s net income from the eligible partnership that is sourced to New Jersey as reflected in Column B of the partner’s Schedule NJK-1 in the foundation year; or
2. The net of all items of partnership income upon which tax has been paid as reflected on the partner’s New Jersey Gross Income Tax return in the application year.

“Foundation year” means the year immediately prior to the creation of the eligible position.

“Full-time employee” means a person, partner or member 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 or distributive share of income, gain, loss, deduction or guaranteed payments is subject to the payment of estimated taxes or 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.

“Net income” means the net combination of a partner’s distributive share of the eligible partnership’s income, gain, loss, deduction, or guaranteed payments.

“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 or estimated taxes 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. In addition, if a grantee merges, consolidates or otherwise combines with another business entity and the resulting company employs former employees in eligible positions on the project, then such employees shall be deemed new employees, except for any such employee who was employed by the combined entity as of the date of the merger or consolidation.

“Partner” means a person who is entitled to either a distributive share of a partnership’s income, gain, loss or deduction or guaranteed payments, or any combination thereof, by virtue of holding an interest in the partnership. Partner also includes a person who is a member of a limited liability company which is treated as a partnership, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54:1-1 et seq.

“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.). Project may constitute multiple locations of a business within New Jersey, but each location must meet the requirements of N.J.A.C. 19:31-10.3.

"Schedule NJK-1" means Schedule NJK-1 as the form existed for taxable year 1997.

"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 or estimated taxes paid by or on behalf of partners that are 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".

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

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

Rewrote the section.

### 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 or not less than 10 percent and not more than 50 percent of the estimated tax of a partner in an eligible position.

(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. 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 or 50 percent of the estimated tax, 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".

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

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

In (a), added "or not less than 10 percent and not more than 50 percent of the estimated tax of a partner in an eligible position" at the end; in (d)2, deleted a former first sentence; and in (e), inserted "or 50 percent of the estimated tax" following "withholdings".

### 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, including the number of existing employees in New Jersey. 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 or estimated taxes of partners received in the previous year by the Division from the business, partnership or cooperative association equals or exceeds in 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 or consolidation with one or more companies, only the eligible positions created or transferred from outside New Jersey after board approval and the official date of the merger or consolidation 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".

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

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

In (a), inserted "; including the number of existing employees in New Jersey" at the end of the first sentence in 1, and inserted "or estimated taxes of partners" following "withholdings" and inserted "; partnership or cooperative association" following "business" in 3; and rewrote (c).

#### 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.

(b) The business shall certify the following annually for the business, project and each new employee for which the grant is made:

1. The total amount of withholdings during the grant year;
2. The annual payroll records of the business detailing each employee and noting:
  - i. Which employee is in an eligible position for grant purposes;
  - ii. Any overtime paid to each employee in an eligible position;
  - iii. The total number of new employees in eligible position; and
  - iv. The number of existing employees.

(c) The Authority shall be entitled to audit the payroll records of the business at any time during the term of the grant as the Authority deems necessary.

(d) If the business receiving a grant should generate significant new employment beyond the base years that was not originally anticipated at application, the Authority may amend the agreement to increase the annual grant percentage or term amount to reflect said increased employment.

(e) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the grant agreement for any two consecutive years, the Authority may terminate the agreement.

(f) If the business does not maintain operations at the project location or another location approved by the Authority for at least 1.5 times the term of the grant, the Authority may recapture all or part of the grant in its discretion.

(g) As a condition of its continuation in the grant program no later than February 1 of each year, for the preceding grant year, every business which is awarded a grant from the Business Employment Incentive Program shall submit to the Authority:

1. A copy of its applicable New Jersey tax return showing business income and withholdings. The Authority, may upon request by the business, extend the filing of its New Jersey tax return to the Authority for the purpose of this grant beyond February 1;
2. An annual payroll report indicating:
  - i. The eligible positions which were created during the base years;
  - ii. The new eligible positions created during each subsequent year from the base years;
  - iii. The positions existing at application;

iv. A certification stating that no new employees are related persons of the owners of the business; and

v. A certification identifying the eligible positions that have been filled by persons who are rehired from a bona fide layoff or transferred from another company;

3. A certification stating the amount, date received and provider for any grant received under State law, including the Business Relocation Assistance Grant; and

4. If the business is awaiting a grant award notification for any grant offered under State law, the business shall submit a certification identifying the grant provider and the anticipated amount and date of award.

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

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

In (g)2i through iii and v, deleted "with social security numbers" following "eligible positions"; in (g)2i, substituted "base years" for "years just ended"; and in (g)2ii, inserted "from the base years.

### 19:31-10.7 Application procedures

(a) A business shall apply to the Authority for a grant on a form prescribed by the Authority which requires the following:

1. The name and address of the business;
2. A history and description of the applicant's business;
3. A detailed description of the proposed project, including the location and type of activity which the business will be engaged in at the project site;
4. A detailed breakdown of the total project cost indicating sources and uses of any financial assistance for the project;
5. A complete schedule of all officers, directors and stockholders owning 15 percent or more of the stock;
6. Annual financial statements for the two most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;
7. A current interim statement, if the most recent annual financial statement is more than six months old;
8. The estimate of eligible positions to be created during the base years and thereafter;
9. An estimate of total withholdings to be generated from these new positions;
10. A certification stating the amount, date received and provider of any grant received under State law, including the Business Relocation Assistance Grant;
11. If the business is awaiting a grant award notification for any grant offered under State law, the business shall submit a certification identifying the grant provider and the anticipated amount and date of award; and
12. Any additional information deemed necessary to evaluate a specific application.

(b) A landlord or cooperative association shall file the information set forth in (a) above, in addition to the following:

1. A copy of the assignment by each tenant or member of a cooperative association to forego any claim of right it may have to a grant; and

2. A copy of the agreement between the landlord or cooperative association and tenants or members which establishes the tenants or members agreed to cooperation to annually submit to the Authority its:

- i. Number of new employees in eligible positions;
- ii. Total employees at commencement of the Agreement between the Authority and landlord or cooperative association;
- iii. Payroll records; and
- iv. Any withholdings during the grant year.

(c) Applications are processed through several layers of staff review, and may then be recommended for consideration and official actions by the members of the Authority at a public meeting. The applicant has no right to have its application presented to the members of the Authority.

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)5, deleted ", including resumes and signed, dated personal financial statements" following "more of the stock".

#### 19:31-10.8 Evaluation process

(a) When all of the required information is received, the Authority staff shall review the materials to determine what percentage and term of grant, if any, the applicant would be eligible to receive based on the eligible positions for new employees. This evaluation shall be based on an evaluation of the application and an analysis of historic and projected financial statements and a comparison to industry peers (primary emphasis will be placed on the record of profitability and financial stability for the past two years and projections of profitability and financial stability over the term of the grant) solely for the purpose of potential disqualification, debarment, and conflict of interest, providing a grant to an applicant shall constitute "financial assistance" under N.J.A.C. 19:30-2.2(a), and the terms and conditions of N.J.A.C. 19:30-2 shall apply to an applicant for a grant.

(b) If a positive determination is made, the requested business employment incentive grant request shall be presented to the members of the Authority for approval.

#### 19:31-10.9 Approval process

(a) Only the members of the Authority can approve a business employment incentive grant.

(b) When the members of the Authority approve a request, the minutes of the meeting at which such approval occurs shall be submitted to the Governor.

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

(d) If there has been no veto, an Agreement shall be issued to the applicant, which contains all terms and conditions of the grant.

(e) When all required documentation is prepared, in form and content satisfactory to the Authority, a Grant Agreement shall be executed.

#### 19:31-10.10 Rescission and withholding of grant payments

(a) The Authority, in addition to any other remedies available pursuant to law, may withhold, reduce or terminate payment of a grant or any portion thereof due to a business. The circumstances under which this may occur include the following:

1. Failure to comply with the requirements of this subchapter or other applicable State laws or rules;
2. Failure to comply with any condition or requirement of the Grant Agreement;
3. Failure to maintain the stipulated employment levels;
4. Submission of false or misleading information, or failure to submit relevant information; or
5. Insolvency, bankruptcy or other conditions which affect the financial integrity of the business.

(b) The Authority shall provide written notice to the business of its intent to withhold, reduce or terminate the grant. The business may request in writing reconsideration of the Authority's decision. The determination to withhold, reduce or terminate a grant is solely within the Authority's discretion.

(c) In the event a grant is to be terminated, the business shall immediately refund the total amount due as determined by the Authority. Refunds shall be made payable to the State of New Jersey for deposit in the Property Tax Relief Fund and mailed to the:

Business Employment Incentive Program  
Division of Taxation  
CN 248  
Trenton, NJ 08625

#### 19:31-10.11 Prevailing wage

Projects that receive grants from this program shall be exempt from the Authority's prevailing wage requirements for the purposes of that grant and its determination. If the company should apply to the Authority for any other form of financial assistance, the prevailing wage requirement shall be applied.

**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 and an annual cap of \$10,000.

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.

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

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

In (b), inserted "and an annual cap of \$10,000" following "\$500.00".

**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  
REMEDATION, UPGRADE AND CLOSURE  
FUND

**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.).

"Applicant" means a corporation, partnership, limited liability corporation, 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.

"Authority" means the New Jersey Economic Development Authority.

"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.

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

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

In "Applicant", inserted a reference to limited liability corporations.

### 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 one third 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 based on Authority findings of:

1. Eligibility;
2. Financial hardship; and
3. Satisfaction of statutory criteria at N.J.S.A. 58:10A-37.5(c).

(f) 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.

(g) 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.