

CHAPTER 31

AUTHORITY ASSISTANCE PROGRAMS

Authority

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

Source and Effective Date

R.2000 d.297, effective June 16, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 31, Authority Assistance Programs, expires on December 13, 2005. See: 37 N.J.R. 1714(a).

Chapter Historical Note

Chapter 31, Authority Assistance Programs, 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, Authority Assistance Programs, was readopted as R.1995 d.435, effective July 20, 1995. See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Subchapter 10, Business Employment Incentive Program, was adopted as R.1996 d.470, effective October 7, 1996. See: 28 N.J.R. 3058(a), 28 N.J.R. 4510(b).

Subchapter 11, Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, was adopted as R.1998 d.151, effective March 16, 1998. See: 29 N.J.R. 5236(b), 30 N.J.R. 1054(a).

Subchapter 12, Technology Business Tax Certificate Transfer Program, was adopted as R.1999 d.381, effective November 1, 1999. See: 31 N.J.R. 2522(a), 31 N.J.R. 3525(a).

Pursuant to Executive Order No. 66(1978), Chapter 31, Authority Assistance Programs, was readopted as R.2000 d.297, effective June 16, 2000. See: Source and Effective Date. See, also, section annotations.

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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, governmental entities 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.

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 a reference to governmental entities.

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 ratables 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) The Authority is empowered to own and lease equipment and/or real estate to eligible applicants.

(c) There are five types of guarantees available: Fixed Asset Guarantees, Working Capital Guarantees, Special Guarantees, Film Production Program Assistance Guarantees, and Smart Growth Pre-development Guarantees.

1. Under the Fixed Assets Guarantee program:

i. The Authority may guarantee the lesser of \$2.0 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);

(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 or locate to another 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; or

(5) Structured finance assistance. For purposes of this sub-subparagraph and the transaction documents, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Base years" means the first two complete calendar years following the approval by the members provided, however, that, at its discretion, an approved applicant may notify the Authority that the base years have terminated prior to such date, and further provided 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.

"Employment compliance period" means with respect to net new full-time permanent jobs to be created, the five consecutive years immediately following the base years and with respect to full-time permanent jobs in the State to be retained, the five consecutive years immediately following the approval of the project by the members. Compliance with other covenants required by the transaction documents may be longer than the employment compliance period.

"Full-time permanent job" means a job filled by a full-time employee as that term is defined at N.J.A.C. 19:31-10.2.

"Net new full-time permanent job" means the full-time permanent jobs created in excess of the number of jobs existing at the project site at application. "Net new full-time permanent job" 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 the application unless the employee's position at his or her previous employer is filled by a new employee.

"Structured finance assistance" means the program set forth in this sub-subparagraph, whereby the Authority purchases machinery, equipment, furniture, leasehold improvements or construction materials using the sales tax exemption granted to the Authority pursuant to N.J.S.A. 54:32B-9 and leases such items to an approved applicant.

(A) Eligibility. In order to be eligible for structured finance assistance, an applicant shall:

I. Demonstrate that the project involves an industry targeted by the Authority, as set forth in N.J.A.C. 19:30-5 or is a designated industry as that term is defined in N.J.A.C. 19:31-10.2; and is located either in a Metropolitan Planning Area (PA 1), Suburban Planning Area (PA 2), designated center or an area designated for growth in a plan that has been endorsed by the New Jersey State Planning Commission at N.J.S.A. 52:18A-196 et seq.;

II. Demonstrate to the Authority that it has viable options to locate the project out of the State, has been offered economic incentives by a competing state and that, without the structured finance assistance, the applicant will not retain, relocate or expand the project in the State;

III. Create a minimum 400 net new full-time permanent jobs or retain a minimum of 600 full-time permanent jobs in the State. If the applicant does not meet the new or retained jobs criteria as set forth in the preceding sentence, it can qualify for structured finance assistance if the aggregate number of full-time jobs to be created and retained total at least 750 of which 300 are net new full-time permanent jobs created.

(B) Program requirements. Eligible applicants for structured finance assistance must comply with the following requirements:

I. The Authority's exposure (if any) shall not exceed \$50,000 per full-time permanent job;

II. The maximum time allowed for acquisition of machinery, equipment, furniture and fixtures, leasehold improvements or construction materials shall be five years from the approval by the members of the project although the actual lease term may be for a longer period; and

III. Structured finance assistance shall have a rolling cap of \$40 million of sales tax benefit per two-year period based on the State's fiscal year. In the event that the rolling cap is met, the EDA may seek the approval of the State Treasurer to exceed the cap and shall only proceed with the administration of the sales tax benefit with the State Treasurer's written approval. By example, if the sales tax benefit approved in fiscal year 1 was \$18 million, the amount available for approval in fiscal year 2 would be \$22 million.

(C) The Authority may reduce the amount of sales tax benefit that is available to any applicant if the amount of sales tax benefit available under the cap is not sufficient to provide the total sales tax benefit that would have otherwise been available.

(D) If a firm does not meet their new job projections, it shall return to the State a proportionate percentage of the sales tax benefit.

iii. Notwithstanding (c)3ii(4) above, a 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 (c)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.

4. Under the Film Production Assistance Program:

i. The Authority may guarantee the lesser of \$1.5 million or 30 percent of the principle amount of the financing;

ii. The Authority, prior to the granting of any guarantee, shall require:

(1) That funding for the film project, as defined in P.L. 1974, c.80 (N.J.S.A. 34:1B-180(3)), has been secured and is in place through a financial institution;

(2) The film production company, as defined in P.L. 1974, c.80 (N.J.S.A. 34:1B-180(3)), to enter into a completion bond or similar security with the Authority in such form, amount, and terms as shall be determined by the Authority; and

(3) That a minimum of one-half the estimated total production costs have been obtained from other sources;

iii. The Authority shall provide in any agreement between the Authority and a film production company for a guarantee that the lender shall retain a security interest in the assets of the film production company, including, but not limited to, all revenues, payments, money, and proceeds generated by the company's film project, and the Authority shall have a subrogated security interest in the collateral to the extent necessary to insure the Authority's full recovery of the amount of any guarantee;

iv. At least 50 percent of the material and production costs for any assisted project shall be purchased and/or spent in the State of New Jersey;

v. More than 70 percent of the filming days must take place in the State of New Jersey;

vi. Film production companies must provide in their employment contracts that not less than the prevailing wage rate, as determined by the Commissioner of Labor, pursuant to P.L. 1963, c.150 (N.J.S.A. 34:11-56.25 et seq.), shall be paid to workers employed in the performance of contracts in connection with a proposed project, including construction, reconstruction, rehabilitation or demolition of property and improvements thereon; and

vii. The total Authority exposure to any entity or related entities shall not exceed \$1.5 million at any one time. Related entities shall mean any person(s) or entity(ies) with ownership interests of 10 percent or more.

5. Under the Smart Growth Pre-development Guarantee Program:

i. The amount of the Authority guarantee shall not exceed \$1.0 million;

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;

iii. The financing proceeds shall be used for the purposes of pre-development site preparation costs to be determined by the Authority. Such costs may include, but are not limited to, land assemblage, demolition, removal of materials and debris and engineering costs; and

iv. Applicants for Smart Growth Pre-development Guarantee shall have projects which must be located either in Planning Areas 1 or 2, designated centers or in municipalities with endorsed plans as defined by the State Redevelopment Plan, must evidence municipal support and be part of a local redevelopment plan.

(d) 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. Smart Growth Pre-development guarantees have a maxi-

mum term of three years. A Special Guarantee term shall not exceed the term of the financing. Film Production Assistance Program guarantee terms will be determined on a project-by-project basis. Factors to be considered in determining the terms of the guarantee are as set forth in N.J.A.C. 19:31-2.4.

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.

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

Inserted a new (b); recodified former (b) and (c) as (c) and (d); and in the new (c)3, inserted "or locate to another state" following "State" in ii(4)(B), and substituted a reference to companies for a reference to existing New Jersey companies in iii.

Amended by R.2000 d.482, effective December 4, 2000.
See: 32 N.J.R. 3555(a), 32 N.J.R. 4275(b).

Inserted (c)3ii(5).

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), deleted the second sentence; rewrote (c).

Amended by R.2004 d.139, effective April 5, 2004.

See: 36 N.J.R. 143(a), 36 N.J.R. 1787(b).

In (c), rewrote the introductory paragraph and added 4; in (d), added the last sentence.

Amended by R.2004 d.346 and d.347, effective September 20, 2004.

See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a), 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).

Rewrote (c); in (d), added the second 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) For all Film Production Assistance Program guarantees, the Authority shall require, in addition to the requirements of (a) through (d) above:

1. A copy of the completion bond;
2. Copies of distribution agreements, as may be available, with major intended markets specified, and details including, but not limited to, companies, territories, and/or countries involved, and duration of exhibition in all major intended markets;
3. Specifics on target audience(s) for film project;

4. A listing and copies of credentials for all principals signed to participate in the film project in the following categories: producing, directing, acting, screenwriting, and cinematography;

5. A complete breakdown of the film project budget;
6. A copy of the proposed shooting schedule, including dates and locations;
7. A copy of the screenplay and brief treatment of the film project, specifying chain of title and/or assignment of rights to literary property;
8. The location of production office; and
9. Proof of liability insurance in an amount acceptable to the Authority.

(f) 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.

Amended by R.2004 d.139, effective April 5, 2004.

See: 36 N.J.R. 143(a), 36 N.J.R. 1787(b).

Added a new (e) and recodified former (e) as (f).

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;

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

9. For projects funded under the Film Industry Production Assistance Guarantee Program, the Authority may utilize a consultant or subject matter experts such as the staff of the New Jersey Motion Picture and Television Commission to review each application and its technical elements for the purpose of assisting the Authority in an investigation and analysis of the financial soundness of the film project or film production company. This review will be considered by the Authority in addition to its own credit evaluation based on the criteria in (a)1 through 8 above.

(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.

Amended by R.2004 d.139, effective April 5, 2004.
See: 36 N.J.R. 143(a), 36 N.J.R. 1787(b).

Added (a)9.

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) Except as otherwise provided in this subsection, direct loans are available in a maximum amount of \$750,000 for fixed asset financing and \$500,000 for working capital.

1. For the Smart Growth Pre-development Loan Program, the maximum loan amount will be \$1 million.

2. For the Brownfields Redevelopment Loan Program, the maximum loan amount will be \$750,000.

3. The maximum amount of combined total financing under the Smart Growth Pre-development and Brownfield Redevelopment loan program(s) is \$1.0 million.

(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) Proceeds of Smart Growth Pre-development loans shall be used for the purposes of pre-development site preparation costs to be determined by the Authority. Such costs may include, but are not limited to, land assemblage, demolition, removal of materials and debris and engineering costs.

(f) Proceeds of Brownfield Redevelopment loans shall be used for financing those remediation costs deemed eligible

by the New Jersey Department of Environmental Protection pursuant to the Municipal Landfill Site Closure, Remediation and Redevelopment Agreement that has been entered into by the applicant with the New Jersey Department(s) of Environmental Protection and Treasury, and the New Jersey Commerce and Economic Growth Commission.

(g) For the Authority's Direct Loan Program, the applicant shall elect in writing, at or prior to the time of closing, a fixed interest rate as set forth in (g)1 or a variable interest rate as provided in (g)2.

1. Fixed Rate Interest: Interest on Smart Growth Pre-development, Brownfield Redevelopment, fixed asset and working capital loans will be fixed at the time of closing and shall be indexed to the United States Treasury Bill rate of like term plus any additional basis points to be determined by the Authority pursuant to the criteria set forth herein; with a floor of four percent and no more than a maximum of the highest Prime Rate as published in the Wall Street Journal plus three percent. Factors to be considered when calculating the additional interest basis points may include the applicant's creditworthiness, quality of collateral, 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 values. 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 closing at the Federal Discount Rate with a floor of three percent. Smart Growth Pre-development and Brownfield Redevelopment loans will have a maximum term of three years.

2. Variable Rate Interest: 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 closing. 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 the Prime Rate or the Federal Discount rate. 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 are as set forth in (g)1 above.

(h) 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.

(i) 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.

(j) Notwithstanding (i) 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 (i)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.

(k) For purposes of (i) and (j) 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).

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Rewrote (e).

Amended by R.2004 d.346, effective September 20, 2004.

See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a).

Rewrote the section.

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.

(d) For Smart Growth Pre-development loans, projects must be located in Planning Areas 1 and 2, designated centers or in municipalities with endorsed plans as defined by the State Redevelopment Plan, must evidence municipal support and be part of a local redevelopment plan.

(e) For Brownfield Redevelopment Loans, project sites must be the subject of a Municipal Landfill Site Closure, Remediation and Redevelopment Agreement that has been entered into by the applicant with the New Jersey Departments of Environmental Protection and Treasury, and the New Jersey Commerce and Economic Growth Commission.

Amended by R.2004 d.346, effective September 20, 2004.

See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a).

Added (d) and (e).

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;

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; and

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.

(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.

19:31-3.4 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.

19:31-3.5 Approval process

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

(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.

1. The commitment letter 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 returned to the Authority, a list of closing instructions is mailed to the attorney for the applicant.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

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

19:31-3.6 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 4. DOWNTOWN BEAUTIFICATION PROGRAM

19:31-4.1 Program description

(a) The Authority is empowered to make direct loans to owners and operators of retail and commercial businesses located in downtown urban areas who are unable to obtain funding from conventional sources to upgrade their properties and to remain in such areas.

(b) Applicants may be eligible for loans in amounts ranging from \$5,000 to \$100,000.

(c) Proceeds of loans are to be used primarily to renovate, remodel or expand the interior and/or exterior of the facility, but a limited amount of the funds can be used for working capital.

(d) Interest on these loans is equal to one percent below the Federal Discount Rate at the time of loan closing, with a minimum of three percent and a maximum of 10 percent.

(e) The term of the loan is a maximum of 10 years, although the repayment schedule is usually for a shorter term based on the applicant's ability to repay.

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.2001 d.242, effective July 16, 2001.

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

In (b), substituted "\$100,000" for "\$50,000".

Amended by R.2002 d.223, effective July 15, 2002.

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

In (d), substituted "three" for "four".

Amended by R.2002 d.333, effective October 7, 2002.

See: 34 N.J.R. 2412(a), 34 N.J.R. 3531(a).

In (d), substituted "approval," for "closing" following "time of loan".

Amended by R.2004 d.346, effective September 20, 2004.

See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a).

In (d), substituted "closing" for "approval".

19:31-4.2 Eligibility standards

To be eligible, an applicant must be located in the downtown area of a targeted municipality (see N.J.A.C. 19:30-5).

19:31-4.3 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;
6. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person; and

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

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;
2. Aging of accounts payable; and/or
3. 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.

19:31-4.4 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 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;

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

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

7. 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 the 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.

19:31-4.5 Approval process

(a) Only the Members can approve a Downtown Beautification loan.

(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.

1. The commitment letter 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 returned to the Authority, a list of closing instructions is mailed to the attorney for the applicant.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

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.2002 d.223, effective July 15, 2002.

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

In (a), substituted "a Downtown Beautification" for "on Urban Centers".

19:31-4.6 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 5. EXPORT REVOLVING LINE OF CREDIT

19:31-5.1 Program description

(a) The Authority is empowered to extend revolving lines of credit for production of goods and services for export to applicants which are unable to obtain funding from conventional sources.

(b) Lines of credit are available up to an amount of \$250,000.

(c) Funds provided under this program must be used to finance the purchase of materials and other production costs for specific, firm contracts and can be used for pre- and post-expert working capital.

(d) Interest on advances under the line of credit is set at the Federal Discount Rate or five percent, whichever is greater, at the time of each borrowing.

(e) The amount of each borrowing, including principal and interest, is payable in full upon collection of the accounts receivable created as a result of the specific contract.

(f) Generally, any borrowing under the line of credit is to be repaid within 180 days of the advance.

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

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

19:31-5.2 Eligibility standards

(a) Eligibility criteria for the export revolving line of credit are as follows:

1. The applicant is in or entering the export market for goods or services, at least 50 percent of the cost of which must be added in New Jersey; and
2. The applicant must have a firm contract to sell;
 - i. The contract payment must be secured by an irrevocable, assignable, and United States bank-confirmed letter of credit; or
 - ii. The accounts receivable must be accepted and insured by the Foreign Credit Insurance Association.

19:31-5.3 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;
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; and
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.

(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

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.

19:31-5.4 Evaluation process

(a) Once 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 the 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 the 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 or disapproval.

19:31-5.5 Approval process

(a) Only the Members can approve an Export Revolving Line of Credit.

(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.

1. The commitment letter 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 returned to the Authority, a list of closing instructions is mailed to the attorney for the applicant.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

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

19:31-5.6 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 6. NEW JERSEY TRADE ADJUSTMENT ASSISTANCE CENTER

19:31-6.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Certification" means the process of determination by the USDOC that a company is eligible to apply for Trade Adjustment Assistance under this program.

"Certified Firm" means a company which has been determined to be eligible to apply for Trade Adjustment Assistance under this program.

"Petitioner" means a manufacturing or producing company seeking assistance under this program.

"TAAC" means the New Jersey Trade Adjustment Assistance Center.

"USDOC" means the United States Department of Commerce.

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

19:31-6.2 Program description

(a) The Authority operates a TAAC for the State of New Jersey under a cooperative agreement with the Economic Development Administration of the USDOC.

(b) The TAAC works with manufacturing/producing firms (generally, Standard Industrial Classification Numbers 2000 to 3999) whose sales or production and employment have declined due to the impact in the marketplace of like or directly competitive imported products.

(c) After a petitioner achieves certification, the TAAC may assist in the development of a business plan in order to identify the specific types of assistance needed.

(d) If the plan is approved by USDOC, the TAAC is empowered to provide technical assistance partially funded by USDOC to implement the types of assistance needed.

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

19:31-6.3 Eligibility standards

(a) To be eligible, a manufacturing/producing company must have a decline in sales or production in the aggregate or for a product representing 25 percent of sales, and a decline in employment of at least five percent.

(b) The decline must be due to the competition of like or directly competitive imported products, which products must represent an increasing share of the U.S. market.

(c) Determinations on eligibility are made by the USDOC in response to a petition package submitted, with the assistance of the TAAC.

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

19:31-6.4 Application and approval process

(a) The petitioner should consult with the TAAC to determine its potential eligibility.

(b) In response to a request for assistance from a potentially-eligible petitioner, TAAC will work with the petitioner in preparing the petition for certification.

(c) If certification is granted, the certified firm may be assisted by the TAAC in developing the business plan and accompanying information to be submitted to the USDOC.

(d) If the plan is accepted by the USDOC, the TAAC may assist in obtaining implementation assistance, using business consultants, and in obtaining partial funding for the assistance.

(e) All approvals are made by the USDOC.

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

19:31-6.5 Cost

(a) The certified firm is required to share in the costs of developing the business plan and in the implementation of assistance.

(b) The determinations of the actual cost sharing will be made by USDOC, which may not provide more than 75 percent of the costs up to a dollar limit (set by USDOC, and revised from time to time).

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

SUBCHAPTER 7. LOCAL DEVELOPMENT FINANCING FUND

19:31-7.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement "The New Jersey Local Development Financing Fund Act" (P.L. 1983, c. 190). This Act established the Local Development Financing Fund, a special depository fund for the purpose of providing financial assistance to certain commercial and industrial projects in certain municipalities who sponsor these projects.

19:31-7.2 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 Local Development Financing Fund Act (P.L. 1983, c.190) as amended and supplemented.

"Eligible project" means a project which has been approved by the Authority to receive financial assistance from the Local Development Financing Fund.

"Eligible project costs" means the costs of planning, developing, executing and making operative, an industrial or commercial redevelopment project. Eligible project costs include:

1. The cost of purchasing, leasing, condemning, or otherwise acquiring land or other property, or an interest therein, in the designated project area or as necessary for a right-of-way or other easement to or from the project area;

2. The cost incurred for, or in connection with, or incidental to, acquiring and managing the land, property or interest;

3. The cost incurred for, or in connection with, the relocating and moving of persons displaced by acquisition;

4. The cost of development or redevelopment, including:

- i. The comprehensive renovation or rehabilitation of the land, property or interest;

- ii. The cost of equipment and fixtures which are part of the real estate, and the cost of production machinery and equipment necessary for the operation of the project;

- iii. The cost of energy conservation improvements designed to encourage the efficient use of energy resources, including renewable and alternative energy resources and cogenerating facilities; and

- iv. The disposition of land or other property for these purposes.

5. The cost of demolishing, removing, relocating, renovating, altering, constructing, reconstructing, installing or repairing any land or any building, street, highway, alley, utility, service or other structure or improvement;

6. The cost of acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements necessary to the project; and

7. The cost incurred or incidental cost including, but not limited to:

- i. Administrative, appraisal and economic analysis;

- ii. Engineering service;

- iii. Planning service;

- iv. Design service;

- v. Architectural service;

- vi. Surveying service; and

- vii. Other professional service.

"Financial assistance" means, but is not limited to, loans, loan guarantees, grants, secondary mortgages, and equity participation provided by the fund.

"Fund" means the Local Development Financing Fund.

"Municipality" means a New Jersey municipality qualifying for aid pursuant to the State formula for State aid to municipalities (see N.J.S.A. 52:27D-178) for services and to offset property taxes.

"Project" means an industrial or commercial enterprise within a municipality that would not be undertaken in its intended scope but for the assistance provided for under the Act and these rules.

"Sponsor" means the governing body of a municipality or, with the approval of the government of the municipality, a local development corporation, community development corporation, municipal port authority, or governing body of a county, or, with the approval of the government of a county, a county development corporation or other public entity designated by the Authority as a sponsor (see N.J.S.A. 40:68A-29).

19:31-7.3 Application for financial assistance

(a) Each application for financial assistance from the Fund shall be accompanied by a non-refundable application fee of \$500.00.

(b) Each application for financial assistance from the Fund shall be accompanied by evidence of the support of the municipality in which the project is located. For purposes of these rules, evidence of municipal support shall mean an approved resolution of the governing body of the municipality.

(c) Each application for financial assistance from the Fund shall be accompanied by a benefit statement prepared by the applicant. The benefit statement shall address:

1. The number of permanent jobs to be created in the municipality in which the project is located, excluding the period of construction or development;
2. The number of jobs preserved by the completion of the project in the case of an existing enterprise;
3. The increase in the valuation of real property in the municipality as a result of the completion of the project;
4. Whether the project will result in the maintenance or provision of at least the same number of housing units at comparable rates as exists prior to the undertaking of the project;
5. Whether the project will be located in an area targeted for economic development and receiving Federal, State and/or local development assistance under other programs;
6. The extent to which the project will contribute to an economic revitalization of the municipality and/or the region;
7. The extent to which the project will advance State and/or regional planning and development strategies; and
8. The extent to which the location of the project is accessible to and promotes the use of public transportation.

(d) Each application for financial assistance from the Fund shall be accompanied by evidence of private source or other public source financing commitments.

(e) Each application for financial assistance from the Fund shall be accompanied by evidence of all requisite Federal and/or State environmental permits necessary for the project.

(f) Each application for financial assistance from the Fund shall be accompanied by a plan for the utilization of minority and women contractors and equal opportunity for employment in connection with the project (see N.J.A.C. 19:31-7.6).

19:31-7.4 Financial assistance

(a) No more than 20 percent of the total financial assistance provided from the Fund shall be in the form of grants or other non-lending assistance.

(b) The total amount of financial assistance provided to project applicants in any county during any year shall not exceed 20 percent of the appropriation made during that year to the Fund.

(c) No financial assistance from the Fund shall be granted to an individual applicant project unless at least 50 percent of the total eligible project cost consists of private resources. For purposes of these rules, private resources shall include, but are not limited to:

1. Conventional private sector mortgages;
2. Purchase money mortgages;
3. Industrial Revenue Bonds;
4. Leases;
5. Loans guaranteed by the Federal Small Business Administration, or similar loan guarantees of other governmental and/or quasi-governmental entities; and
6. Equity investments in the project.

(d) The Fund shall provide loans in the form of permanent subordinate mortgage financing for eligible project cost at or below market rates of interest, as determined by the Authority (see N.J.A.C. 19:31-7.5(c)).

(e) The applicant shall secure interim financing on all projects involving construction, unless the Authority agrees otherwise in writing. The interim lender shall assume full responsibility for monitoring the construction of a project and for its timely completion. The interim lender may be the first mortgage lender or another experienced, qualified construction lender and shall be approved by the Authority.

(f) The applicant shall have such equity in the project as the Authority may deem appropriate to insure the applicant's ability to repay the loan from the Fund.

(g) The applicant shall certify in writing that it is unable to provide additional funds in the project beyond its stated commitment and that without assistance from the Fund the project would be economically unviable and unable to proceed.

(h) Assistance other than loans from the Fund may be approved where the Authority deems such assistance necessary to the success of the project. Such assistance shall not be provided for projects that can be funded by loans.

19:31-7.5 Terms of financial assistance

(a) The minimum loan amount from the Fund shall be \$50,000 and the maximum loan amount from the Fund shall be \$2,000,000.

(b) The term of a loan from the Fund can be up to 25 years.

(c) The interest rate on a loan from the Fund will be the one-half of the Federal Discount Rate at the time of loan closing, or three percent, whichever is greater.

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.2002 d.223, effective July 15, 2002.

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

In (c), substituted "three for "five".

Amended by R.2002 d.333, effective October 7, 2002.

See: 34 N.J.R. 2412(a), 34 N.J.R. 3531(a).

In (c), substituted "approval," for "closing" following "time of loan".

Amended by R.2004 d.346, effective September 20, 2004.

See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a).

In (c), substituted "closing" for "approval".

19:31-7.6 Evaluation of applications

(a) The Authority shall evaluate and rank each application for financial assistance considering the following factors:

1. The number of unemployed persons in the municipality in which the project is located;
2. The number of permanent full-time jobs to be created and/or maintained directly by the project, excluding the period of construction or development;
3. The number of jobs preserved by the completion of the project for an existing enterprise that otherwise would leave the State;
4. The increase in the valuation of real property in the municipality as a result of the completion of the project;
5. The percentage of the total eligible project costs to be financed from private and/or other public sources;
6. Whether the project results in the maintenance or provision of at least the same number of housing units at comparable rates that exist prior to the undertaking of the project within the municipality or surrounding area;

7. Whether the project will be located in an area targeted for economic development and/or will be receiving Federal, State and/or local development incentives under other programs;

8. The extent to which the project will contribute to an economic revitalization of a municipality or region, and will promote or add to the rehabilitation of the physical environment of the immediate area or municipality in which it is to be located;

9. The degree to which the project will facilitate the advancement of State or regional planning development strategies;

10. The extent to which the locations of the project are accessible to and/or promote the use of public transportation;

11. The degree of support for, participation in, and/or consultation about the project, within the community in which the project will be located;

12. The likelihood that the project will create and/or preserve private sector jobs, which will last for a period of at least two years; and

13. The likelihood that the project will result in providing a significant increase in the real property tax base of the municipality in which the project is located.

(b) After the evaluation and ranking is completed, the projects will be presented to the members of the Authority for their review and approval.

19:31-7.7 Minority and women business set-aside plans and requirements

(a) Each project approved to receive financial assistance from the Fund shall set a target level of the aggregate project construction costs for the purpose of providing contracting opportunities for minority businesses and women businesses.

(b) The developer and/or general contractor of the project shall identify the minority and/or women businesses that will participate in the project by construction trade, together with the contract sum to be paid to each minority business.

(c) In determining the target level and compliance therewith, a developer and/or general contractor must proceed in accordance with N.J.A.C. 12A:10-2.

19:31-7.8 Rescission of financial assistance from the Fund

(a) The Authority may at its discretion rescind part or all of the financial assistance from the Fund when it has become evident after the granting of financial assistance that:

1. The commitment of other financial resources from private sources has been withdrawn;

2. The project is judged no longer capable of repaying the Fund for the financial assistance it has received;

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.

"Applicant" means a municipal governmental entity, the New Jersey Redevelopment Authority, an individual, corporation, partnership, or other private business entity which has been determined by the Department to be eligible for financial assistance or a grant under the Fund.

"Authority" means the New Jersey Economic Development Authority.

"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.

"Municipal governmental entity" means any agency, board, governing body, bureau, division, office, commission or other instrumentality within a municipality, but shall not include a school board.

"NJRA" means the New Jersey Redevelopment Authority.

"Person" shall not include any municipal governmental entity.

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

"Qualifying person" means any person who has a net worth of not more than \$2 million.

"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).

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

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

Rewrote "Applicant"; and inserted "Municipal governmental entity", "NJRA" and "Qualifying person".

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 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 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 or the NJRA that hold a tax sale certificate on, have acquired through foreclosure or other similar means, or have acquired through, or have passed a resolution or ordinance or other appropriate document to acquire, by voluntary conveyance for the purpose of redevelopment, 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. The real property shall not have been used by that entity for the conduct of its official business.

(b) Financial assistance from the Fund may only be rendered to persons who cannot establish a remediation funding source for the full amount of the remediation and may be rendered only for that amount of the cost of remediation for which the person cannot establish a remediation funding source. This limitation shall not apply to the NJRA, municipal governmental entities, or to persons who are not required to establish a remediation funding source for the part of the remediation involving an innovative technology, an unrestricted use remedial action or a limited restricted use remedial action, persons performing a remediation in an environmental opportunity zone, or persons who voluntarily perform a remediation.

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

1. Municipal governmental entities or the NJRA that hold tax sale certificate on, have acquired through foreclosure or other similar means, or have acquired through, or have passed a resolution or ordinance or other appropriate document to acquire by, voluntary conveyance for the purpose of redevelopment, 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;

i. Notwithstanding (c)1 above, no grant shall be awarded for purposes of remedial investigation until the municipal governmental entity or the NJRA actually owns the real property, or to a municipal governmental entity unless that entity has adopted, by ordinance or resolution, a comprehensive plan specifically for the development or redevelopment of contaminated or potentially contaminated real property in that municipality or the entity can demonstrate to the Authority that a realistic opportunity exists that the property will be developed or redeveloped within a three year period from the completion of the remediation.

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

3. Qualifying persons who propose to perform a remedial action that uses an innovative technology or that would result in an unrestricted use remedial action or a limited restricted use remedial action.

(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 or any municipal governmental entity that 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, grants for the use of innovative technologies, grants for the implementation of unrestricted use, remedial actions or limited restricted use remedial actions, 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).

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.

19:31-8.4 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) Loans to municipal governmental entities and the NJRA shall bear an interest rate equal to two points below the Federal Discount Rate at the time of approval or at the time of loan closing, whichever is lower, except that the rate shall be no lower than three percent. Interest on all other 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).
Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).
Rewrote (b).

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 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 or NJRA 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.

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), deleted "and grants" following "assistance"; and in (b), inserted "or NJRA" following "entity".

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, municipal

governmental entities or the NJRA 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.

Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).
In (b), inserted a reference to the NJRA.

19:31-8.7 Application for financial assistance and grants

(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 Department shall forward the approved application to the Authority for further processing. The Authority shall have the discretion to request any additional information from the applicant and/or from the Department which it deems necessary in order to complete its evaluation of the application. An application shall be deemed to be complete at such time as the Authority has received all required information in the required form.

(c) The applicant will be given priority for financial assistance and grants 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. Notwithstanding anything in this section to the contrary, in the event the applicant submits the additional information in the required form within the 30 day period, the application shall be deemed complete as of the initial application submission date.

(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 or grant 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).

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

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

Rewrote (b); inserted references to grants in (c) and (f)2; and in (d), added a second sentence.

19:31-8.8 Evaluation process for financial assistance and grants

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

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

9. For municipal government entities, all Local Finance Board requirements must be satisfied.

(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.

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

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

Inserted (a)9.

19:31-8.9 Approval process for financial assistance and grants

(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, award closing package, notice of approval of financial assistance, or grant, is issued to the applicant.

1. The notice of approval will contain all material terms, conditions and collateral required by the Authority and will include 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 or NJRA, 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 within the requisite time frame, a list of closing instructions shall be mailed to the municipality or attorney for the applicant. The Authority's commitment shall terminate and the Authority shall have no further obligation in connection with an application if the notice of approval is not signed and returned to the Authority, together with the applicable fees, within 120 days of its delivery or month's end, whichever is later for municipalities and within 30 days of the date of the notice of approval or month's end, whichever is later (acceptance date) for other applicants. In addition, in the event that the financing is not closed on or before 90 days from the date of acceptance for municipalities and 180 days from the acceptance date for other applicants, the Authority's obligation to provide financing shall terminate and the applicant shall be required to submit a new application. Upon receipt of a written request, the Authority, in consultation with the Department of Environmental Protection, may consider an extension of time.

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

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

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

Rewrote (d) and (f); in (e), inserted a reference to grants; and in (g), substituted a reference to closings for a reference to loan closings, and deleted a reference to sponsors.

Amended by R.2000 d.482, effective December 4, 2000.

See: 32 N.J.R. 3555(a), 32 N.J.R. 4275(b).

In (f), added "for municipalities and within 30 days of the date of the notice of approval or month's end, whichever is later (acceptance date) for other applicants" at the end of the second sentence, and inserted "for municipalities and 180 days from the acceptance date for other applicants" following "acceptance" in the third sentence.

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 will be spent in accordance within a Department approved scope of work and a certification from the applicant that it is in full compliance with all of the terms and conditions of the assistance agreement. Disbursements are subject to certain preconditions, including, among other things, approval by the Department of the remediation contracts and all previously performed 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 liable party. All moneys collected in a cost recovery subrogation action shall be deposited into the Fund.

(d) Where financial assistance to a person other than a municipal governmental entity or the NJRA 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.

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

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

Rewrote (a); in (c), substituted a reference to liable parties for a reference to responsible parties, and added a second sentence; and in (d) inserted a reference to the NJRA.

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

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

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.

19:31-8.13 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 P.L. 1963, c.73 (N.J.S.A. 47:1A-1 et seq.).

SUBCHAPTER 9. NEW JERSEY BOAT INDUSTRY LOAN GUARANTEE FUND

19:31-9.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1993, c.358. This Act established the New Jersey Boat Industry Loan Guarantee Fund, a special, revolving fund for the purpose of providing loan guarantees to manufacturers, assemblers and distributors of luxury boats in New Jersey.

19:31-9.2 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.358.

“Authority” means the New Jersey Economic Development Authority.

“Boat” means a vessel or watercraft, other than a personal watercraft or sea plane on the water, used or capable of being used as a means of transportation on water, which may be temporarily or permanently equipped with machinery for propulsion.

“Boat manufacturer or distributor” means an independently owned and operated business which:

1. Manufactures, assembles or distributes boats in the State, the retail value of which is at least \$100,000 each, or manufactures or provides marine products in the State for such boats; and
2. Prior to January 1, 1991, manufactured, assembled or distributed boats in the State the retail value of which was at least \$100,000 each, or manufactured or provided marine products in the State for such boats.

“Cost” means the expenses incurred in connection with the operation of a boat manufacturer or distributor, which can be reasonably expected to be recovered through the financing of the operation, and which shall include, but not be limited to, the costs of planning, fixed assets, materials, working capital, floor plan funding and any other costs

determined by the Authority to be necessary to carry out the purposes of the Act.

“Fixed assets” means any real property, interests in real property, plant, equipment, and other assets commonly accepted as fixed assets.

“Marine products” means those parts and materials utilized in the design, construction and maintenance of boats, which shall include, but not be limited to, parts and materials used in boat engines, generators, transmissions, exhaust systems and electrical, plumbing, heating and cooling systems, except that marine products shall not include any oil or oil-based products or materials.

“Members” means the members of the Authority.

“Participating bank” or “bank” means a State- or Federally-chartered bank, savings bank or savings and loan association or a bank organized under the laws of a foreign government, deemed eligible by the Authority for participation in the program.

“Program” means the New Jersey Boat Industry Loan Guarantee Program established by the Authority pursuant to the Act.

“State” means the State of New Jersey.

“Working capital” means those liquid capital assets other than fixed assets.

19:31-9.3 Eligibility

(a) Boat manufacturers and distributors are eligible for guarantees of loans and lines of credit made by participating banks to pay for eligible costs provided that:

1. The Authority, after consultation with the Office of Labor Statistics in the Division of Planning and Research of the Department of Labor, shall determine that the loan for which a guarantee is requested, is expected to result in a net increase in the number of jobs for residents of the State subsequent to August 10, 1993; and
2. The Authority is satisfied that the boat manufacturer or distributor has the ability, reputation and creditworthiness necessary to reach a market and generate sales.

(b) To be eligible for the program, applications must be received by July 18, 1995.

19:31-9.4 Terms of guarantees

(a) Guarantees by the Fund shall be for a term of not more than five years.

(b) Borrowings against lines of credit which are guaranteed by the Fund must be evidenced by purchase orders and the line of credit must be paid down upon receipt of

payment by the borrower of the invoices represented by the applicable purchase orders.

19:31-9.5 Amount of guarantees

(a) Guarantees by the Fund may be, generally, for the lesser of \$1.5 million or 90 percent of the principal amount of the loan or line of credit.

(b) In no event will the fund provide guarantees in an amount in excess of \$35,000 per new or maintained job which can reasonably result from the loan or line of credit financing which the Fund will guarantee.

19:31-9.6 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. Annual financial statements for the three years ending immediately prior to January 1, 1991, including the balance sheets, operating statements and reconciliation of source and application of funds;
5. A current interim statement, if the most recent annual financial statement is more than six months old;
6. 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;
7. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;
8. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person;
9. 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

10. A formal commitment letter from the participating bank 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 actions of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-9.7 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 (primary emphasis will be placed on the record of profitability and financial stability prior to January 1, 1991 and projections of recovered profitability and financial stability over the term of the guarantee);
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, 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, as amended by P.L. 2003, c.166. 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.

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Added " , as amended by P.L. 2003, c.166" at the end of the first sentence.

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.

"Advanced computing" means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.

"Advanced computing company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of advanced computing for the purpose of developing or providing products or processes for specific commercial or public purposes.

"Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

"Advanced materials company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of advanced materials for the purpose of developing or

providing products or processes for specific commercial or public purposes.

“Authority” means the New Jersey Economic Development Authority.

“Base employment number” shall mean the number of employees the business has employed in the State of New Jersey at the time of application for the grant.

“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.

“Biotechnology” means the continually expanding body of fundamental knowledge about the functioning 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 that body of fundamental knowledge.

“Biotechnology company” means a person, whose headquarters or base of operations is located in New Jersey, 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 person, whose headquarters or base of operations is located in New Jersey, engaged in providing services or products necessary for such research, development, production, or provision.

“Bonds” means bonds, notes, or other obligations issued by the Authority pursuant to the Act.

“Business” means a corporation, sole proprietorship, partnership, corporation that has made an election under Subchapter S corporation, 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 this State. A grant received 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. Business shall also include co-employers pursuant to an employer leasing agreement in accordance with N.J.S.A. 34:8-67 et seq., between an entity that qualifies as a business hereunder and a professional employment organization; provided, however, that for purposes of paying the grant, payment shall be made solely to the entity and not to the professional employment organization.

“Business Employment Incentive Commitment Letter” or “Commitment Letter” means the written commitment issued by the Authority which sets forth the terms and conditions that must be met by the business in order to receive the grant.

“Commitment duration” means 1.5 times the term of the grant.

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

“Designated industry” means a business engaged in the field of biotechnology, pharmaceuticals, financial services, transportation and logistics, advanced computing, advanced materials, electronic device technology, environmental technology or medical device technology.

“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.

“Electronic device technology” means a technology involving microelectronics, semiconductors, electronic equipment and instrumentation, radio frequency, microwave and millimeter electronics, and optical and optic-related electrical devices, or data and digital communications and imaging devices.

“Electronic device technology company” means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of electronic device technology for the purpose of developing or providing products or processes for specific commercial or public purposes.

“Eligible partnership” means a partnership or limited liability company that is qualified to receive a grant as established in the Act.

"Eligible position" means a new full-time position created by a business in New Jersey or transferred from another state by the business during the base years or subsequent years of a grant. For grants awarded on or after July 1, 2003, eligible position includes only a position for which a business provides employee health benefits under a group health plan as defined under section 14 of P.L. 1997, c.146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes. "Eligible position" also includes all current and future partners or members of a partnership or limited liability company created by a business in New Jersey or transferred from another state by the business pursuant to the conditions set forth in the act during the base years or in subsequent years of a grant. An "eligible position" shall also include a position occupied by a resident of this State whose position is relocated to this State from another state but who does not qualify as a "new employee" because prior to relocation his or her wages or his or her distributive share of income from a gain, from a loss or deduction, or his or her guaranteed payments or any combination thereof, prior to relocation, were not subject to income taxes imposed by the state or municipality in which the position was previously located. An "eligible position" shall also include a position occupied by a resident of another state whose position is relocated to this State but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq. An "eligible position" shall not include any position located within New Jersey, which, within a period either three months prior to the business' application for a grant under the Act or six months after the date of application, ceases to exist or to be located within New Jersey.

"Employment incentive" means the percentage and term of a grant.

"Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, or the development of alternative energy sources.

"Environmental technology company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of environmental technology for the purpose of developing or providing products or processes for specific commercial or public purposes.

"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 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 is subject to withholding as provided in the New Jersey Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.) or who is a partner of an eligible partnership, who works for the partnership 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, and whose distributive share of income, gain, loss or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, 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.

"Medical device technology" means a technology involving any medical equipment or product (other than a pharmaceutical product) that has therapeutic value, diagnostic value, or both, and is regulated by the Federal Food and Drug Administration.

"Medical device technology company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of medical device technology for the purpose of developing or providing products or processes for specific commercial or public purposes.

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

"Net income from the eligible partnership" 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 or who is a partner of an eligible partnership, who works for the partnership 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, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of 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 New Jersey resident whose position is relocated to this State shall not be classified as a "new employee" unless his or her wages or his or her distributive share of income from a gain, from a loss or deduction, or his or her guaranteed payments or any combination thereof, 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 employee" 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 provided, however, that "new employee" shall include any person who was previously co-employed in New Jersey by a professional employment organization and a business if the employee is co-employed by the same professional employment organization and a different business. New employee shall also include an employee whose position is relocated to this State but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq. 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.

"New employment commitment" shall mean the number of new employees actually hired at the end of the base years but in no case shall it exceed the number of new employees which the business has represented at application that it will employ and maintain during and throughout the commitment duration.

"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.

"Professional employment organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to N.J.S.A. 34:8-67 et seq.

"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.

"Residual withholdings" means for any period of time, the excess of the estimated cumulative withholdings for all executed agreements eligible for payments under the Act over the cumulative anticipated grant amounts.

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

"Targeted industry" means a business engaged in the field of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology or medical device technology.

"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, or any combination thereof, pursuant to the "New Jersey Gross Income Tax Act," N.J.S.A. 54A:1-1 et seq., and, if the new employee is an employee whose position has moved to New Jersey but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq., the amount of withholding that would occur if the employee were to move to New Jersey. Withholdings shall not include amounts withheld by a business from stock options, money or other payments given to a new employee pursuant to the termination of employment of the new employee. Withholdings shall include amounts withheld by a business from stock options, money or other payments given to a new employee pursuant to a bonus for commencing employment or for services rendered by the new employee.

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.
Amended by R.2004 d.94, effective March 1, 2004.
See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).
Rewrote the section.

Amended by R.2005 d.97, effective March 21, 2005.

See: 36 N.J.R. 5663(a), 37 N.J.R. 904(b).

Rewrote "Business", "New employee", and "Withholdings"; added "Base employment number", "Commitment duration", "New employment commitment", and "Professional employment organization".

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 25 eligible positions in the base years; or
- ii. Create at least 10 eligible positions in the base years if the business is a targeted industry;

2. In the case of a business which is a landlord, the landlord may apply to the Authority in one consolidated application for a Business Employment Incentive Grant for any project which creates at least 25 eligible positions in the base years, and in which the tenants of members of the cooperative association have agreed to assign to the landlord any claim of right that they may have individually to a grant and have agreed to cooperate with the landlord 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 individually meet the eligibility standards set forth herein, the tenant may elect to submit its own application for a grant rather than through its landlord;

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.

(d) A business shall not be eligible to be approved for a grant on or after July 1, 2003 unless the business provides employee health benefits under a group health plan as defined under section 14 of P.L. 1997, c.146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes.

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Rewrote (a) and added (d).

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 50 percent of the withholdings of the eligible positions for new employees or not less than 10 percent and not more than 30 percent of the estimated tax of a partner of an eligible partnership whether paid directly by the partner or by the eligible partnership on behalf of such partner's account, or any combination thereof. In no case shall the aggregate amount of the employment incentive grant awarded pursuant to a business employment incentive agreement entered into on or after July 1, 2003 exceed an average of \$50,000 for all new employees over the term of the grant.

(b) A business may be eligible to be awarded a grant of up to 80 percent of the withholdings of the business or up to 50 percent of the estimated tax of the partners of an eligible partnership if the grant promotes smart growth and the goals, strategies and policies of the State Development and Redevelopment Plan established pursuant to section 5 of P.L. 1985, c.398 (N.J.S.A. 52:18A-200) as determined by and based upon criteria promulgated by the Authority following consultation with the Department of Community Affairs, Office of Smart Growth and set forth in (c) below.

(c) 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;
9. Whether the business is a designated industry;
10. The impact of the business on State tax revenues. For the period of the grant during which the Authority remits payments to the grantee, the amount of the grant allocable to eligible employees that are residents of another state whose income is not subject to New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq., shall not exceed the amount allocable to such employees at the time of the Authority's approval of the grant;
11. Whether the business is located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan;
12. Whether the business is located in a former Urban Coordinating Council or other distressed municipality as defined by the Department of Community Affairs;
13. Whether the business is located in a brownfield site, defined as the first occupants of the site after issuance of a new no-further action letter;
14. Whether the business is located in a center designated by the State Planning Commission, or in a municipality with an endorsed plan;
15. Whether the business is located within one-half mile of a rail station or bus hub; or whether the business has created or subscribed to an ongoing transportation program for mass transit as defined by New Jersey Transit;
16. Whether the business is located in an area designated by the locality as an "area in need of redevelopment";
17. Whether the project is linked with housing production or renovation (market or affordable) utilizing at least 25 percent of the total buildable area of the site;
18. Whether the business is located within five miles of and is working cooperatively with a public or non-profit university on research and development; and
19. Such factors as presented by a specific applicant.

(d) 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 either annual appropriation from the General Fund to the Authority or issuance of a bond, the proceeds of which are intended for grant payments, 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.

(e) 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 and partners in each category, the salary of each employee, the estimated tax paid by each partner in the foundation year, 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 new employee commitment, the business may be eligible to receive an adjustment in its grant to include the lesser of the dollar amount equal to the amount of withholdings paid for the additional eligible positions above the new employment commitment multiplied by the grant award percentage; or a dollar amount equal to up to 20 percent above the dollar amount of the withholdings attributed to the new employment commitment adjusted annually by the Consumer Price Index, with the exception of the following which, in the discretion of the Authority, may receive the full dollar amount of withholdings paid for the additional eligible positions multiplied by the grant award percentage:

- i. A business with a total of 100 employees or less at the time of application for the grant;
- ii. A business making significant leasehold improvements or renovations to accommodate additional growth at the project; or
- iii. A manufacturing business making a significant capital investment such as investment in a new product line or model or providing sufficient evidence that it plans a significant increase in production from existing equipment, such as higher utilization rates.

(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 applicant or 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.

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

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

In (d)1, substituted "in the case of a loan may" for "will" following "Authority and" in the introductory paragraph, and inserted a reference to corporate guarantees in ii; in (e), rewrote the first sentence; and in (f), inserted "applicant or" preceding "attorney".

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 or will be 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.

(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.

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

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

In (b), deleted a reference to grants.

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

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

In (a), inserted "or will be" preceding "spent in accordance".

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 shall be deemed a public record subject to the provisions of N.J.S.A. 47:1A-1 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).

Deleted a reference to grants.

SUBCHAPTER 12. TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM

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 sub-atomic 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 applicant" means a biotechnology or technology business that is submitting an application to the Technology Business Tax Certificate Transfer Program that has not been approved to sell unused net operating loss carryover or unused research and development tax credits in a previous program year.

"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.

"Re-certification applicant" means a biotechnology or technology business that is submitting an application to the Technology Business Tax Certificate Transfer Program that was approved in a prior year and is requesting an approval to sell new unused net operating loss carryover or unused research and development tax credits.

"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.

"Returning applicant" means a biotechnology or technology business that is submitting an application to the Technology Business Tax Certificate Transfer Program to sell unused net operating loss carryover or unused research and development tax credits that were approved for sale in a previous year but did not receive a full allocation and, therefore, is applying for an allocation of previously approved benefits.

"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).

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

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

Added "New applicant", "Re-certification applicant", "Returning applicant".

19:31-12.3 Eligibility

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

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

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

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

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

Amended by R.2003 d.443, effective November 3, 2003.

See: 35 N.J.R. 3466(a), 35 N.J.R. 5162(a).

In (a)4, inserted last sentence.

19:31-12.4 Application to the program

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

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

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

and selling business defining the terms of the sale of the certificate; and the Tax Benefit Identification Form which summarizes the accumulated net operating losses and research and development credits authorized to be sold and the value intended to be sold. For determination of eligibility for the program, the initial application package shall also include a selling business application and a spending certification form.

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

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

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

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

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

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

In (a), rewrote the second sentence.

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

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

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

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

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

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

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

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

Rewrote (a).

19:31-12.5 Evaluation process

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

1. The threshold criteria of eligibility in which the applicant meets the definition of technology business or biotechnology business, and satisfies the standards in N.J.A.C. 19:31-12.3;

2. The actual potential scientific and technological viability of the applicant's business product(s), service(s) and/or process(es) as demonstrated by its:
 - i. Uniqueness of concept;
 - ii. Creditability/plausibility of concept; and
 - iii. Scientific/technological resources of the applicant;

3. The degree to which the innovation of the applicant's product(s), service(s) and/or process(es) created in New Jersey offers a competitive advantage to the business and enhances and diversifies the State of New Jersey's capacity and competitiveness in the business' field;

4. The degree to which the proposed financial assistance will result in significant growth in permanent full-time employment based upon the increase in permanent full time employment in the two most recent calendar years;

5. The financial resources of the applicant including:
 - i. The degree to which the proposed financial assistance demonstrates the prospect of a significant positive change in net income or loss based upon the recent net income or loss trend;
 - ii. Liquidity;
 - iii. Market share; and
 - iv. Ability to access other financial assistance; and

6. Use of the proceeds of the anticipated sale of tax benefits.

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

1. A Buying Business Information Sheet which identifies the buyer, the amount of tax benefits to be sold and the selling price;

2. A Tax Benefit Identification Form on which the applicant lists the amount of tax benefits they wish to sell and the years that the Net Operating Loss's and/or Research and Development tax credits were incurred;

3. A Private Financial Assistance Form specifying how the applicant will expend the private financial assistance for allowable expenditures for the operations of the company;

4. An executed form of the standard selling agreement, with the Private Financial Assistance Form attached as an exhibit; and

5. If the applicant was authorized to sell and did sell tax benefits in the prior year, a spending certification that attests that the applicant spent the proceeds of the prior year's sale of tax benefits in accordance with the prior year's Private Financial Assistance Form.

(c) After approval of the tax benefit by the Division of Taxation as evidenced by the issuance of a tax certificate which will be sent to the Authority, the Authority will issue final approval of the grant only upon the receipt of a certificate from the applicant, dated the date of the closing of the sale of the tax benefit certificate that states, among other matters, that as of the date of the certificate, the company is operating as a new or expanding emerging biotechnology or technology business and has no current intention to cease operating as a new or expanding emerging biotechnology or technology business. Returning companies are not required to satisfy the definition of "new or expanding."

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

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

In (a), rewrote 4 and 5i.

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

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

Rewrote (b) and (c).
Amended by R.2003 d.443, effective November 3, 2003.
See: 35 N.J.R. 3466(a), 35 N.J.R. 5162(a).
Rewrote (c).

19:31-12.6 Approval process

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

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

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

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

Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).
Rewrote the section.
Amended by R.2001 d.242, effective July 16, 2001.
See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).
In (d), rewrote the first sentence.

19:31-12.7 Allocation of tax benefits

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

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

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:

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

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 reapplying to the program pursuant to (a)3 above.

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), deleted "\$50,000,000 of tax benefits over State fiscal year 2000 and" following "provide" in the introductory paragraph.

SUBCHAPTER 13. RULES FOR IMPLEMENTATION OF AN ACT CONCERNING THE RESTRUCTURING OF CERTAIN SOLID WASTE FACILITY BONDS, AND PROVIDING FOR THE FINANCING THEREOF THROUGH THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, P.L. 2001, c.401.

Authority

N.J.S.A. 52:18A-30; P.L. 2001, c.401

Source and Effective Date

R.2002 d.381, effective November 18, 2002.
See: 34 N.J.R. 2208(a), 34 N.J.R. 2549(b), 34 N.J.R. 3973(b).

19:31-13.1 Purpose and authority

The rules in this subchapter are established to implement amendments to the New Jersey Economic Development Authority Act, P.L. 1974, c.80 (N.J.S.A. 34:1B-1 et seq.) set forth in P.L. 2001, c.401, "An Act concerning the restructuring of certain solid waste facility bonds, and providing for the financing thereof through the New Jersey Economic Development Authority."

19:31-13.2 Scope

This subchapter establishes the requirements and procedures to determine the eligibility of counties or public

authorities to receive State financial assistance in connection with solid waste facility bonds.

19:31-13.3 Definitions

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

"Act" means "An Act concerning the restructuring of certain solid waste facility bonds, and providing for the financing thereof through the New Jersey Economic Development Authority," P.L. 2001, c.401.

"Board" means the governing board of the NJEDA constituted pursuant to N.J.S.A. 34:1B-4.

"Bonds" means bonds or other obligations issued by the NJEDA pursuant to P.L. 1974, c.80 (N.J.S.A. 34:1B-1 et seq.), "Economic Recovery Bonds or Notes" issued pursuant to P.L. 1992, c.16 (N.J.S.A. 34:1B-7.10 et al.), bonds, notes, other obligations and refunding bonds issued by the NJEDA pursuant to P.L. 2000, c.72 (N.J.S.A. 18A:7G-1 et al.) or bonds or other obligations issued pursuant to the Act.

"County" means any county of any class.

"County solid waste facility" means a solid waste facility that is designated by a public authority or county in its adopted district solid waste management plan as approved by the DEP prior to November 10, 1997 as the in-county facility to which solid waste generated within the boundaries of the county is transported for final disposal, or transfer for transportation to an offsite solid waste facility or designated out-of-district disposal site for disposal, as appropriate, pursuant to interdistrict or intradistrict waste flow orders issued by the DEP, regardless of whether the county solid waste facility was acquired, constructed, operated, abandoned or canceled.

"Deficiency agreement" means that agreement which is entered into by the NJEDA, the Treasurer and a county in which the county pledges to cover any shortfall and to pay any deficiencies in the repayment obligations of the applicable public authority.

"DEP" means the Department of Environmental Protection.

"Department" means the Department of the Treasury.

"NJEDA" means the New Jersey Economic Development Authority, created by section 4 of P.L. 1974, c.80 (N.J.S.A. 34:1B-4).

"Public authority" means a municipal or county utilities authority created pursuant to the "municipal and county utilities authorities law," P.L. 1957, c.183 (N.J.S.A. 40:14B-1 et seq.); a county improvement authority created pursuant to the "county improvement authorities law," P.L. 1960,

c.183 (N.J.S.A. 40:37A-44 et seq.); or a pollution control financing authority created pursuant to the "New Jersey Pollution Control Financing Law," P.L. 1973, c.376 (N.J.S.A. 40:37C-1 et seq.) that has issued solid waste facility bonds or that has been designated by the county pursuant to section 12 of P.L. 1975, c.326 (N.J.S.A. 13:1E-21) to supervise the implementation of the district solid waste management plan.

"Repayment obligations" means the obligations required to be paid by a public authority or county receiving State financial assistance pursuant to this subchapter which shall be as set forth in the solid waste repayment agreement, which shall not, in any case, be less than that which is required by the Act.

"Solid waste" means garbage, refuse, and other discarded materials resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste materials including liquids, except for source separated recyclable materials or source separated food waste collected by livestock producers approved by the State Department of Agriculture to collect, prepare and feed such wastes to livestock on their own farms.

"Solid waste disposal" means the storage, treatment, utilization, processing, or final disposal of solid waste.

"Solid waste facility bonds" means the bonds, notes or other evidences of financial indebtedness issued by, or on behalf of, any public authority or county related to the planning, design, acquisition, construction, renovation, installation, operation or management of a county solid waste facility.

"Solid waste facilities" means, and includes, the plants, structures and other real and personal property acquired, constructed or operated by, or on behalf of, any county or public authority pursuant to the provisions of the "Solid Waste Management Act," P.L. 1970, c.39 (N.J.S.A. 13:1E-1 et seq.) or any other act, including transfer stations, incinerators, resource recovery facilities, including co-composting facilities, sanitary landfill facilities or other plants for the disposal of solid waste, and all vehicles, equipment and other real and personal property and rights therein and appurtenances necessary or useful and convenient for the collection or disposal of solid waste in a sanitary manner.

"Solid waste repayment agreement" means that agreement which is entered into by the NJEDA and a county or public authority and approved by the Treasurer to effectuate the refunding or rescheduling of its solid waste facility bonds and which provides for, among other things, the terms and conditions of the State financial assistance to be provided by the NJEDA to the county or public authority and the repayment obligations.

"State financial assistance" means the assistance provided by the NJEDA to the county or public authority, as applicable, pursuant to the Act. The amount and terms and conditions of such State financial assistance shall be set forth in the solid waste repayment agreement.

"Treasurer" means the Treasurer of the State of New Jersey.

19:31-13.4 Access

The public authority and the county shall provide to NJEDA, Department and DEP personnel access to records related to the need for and use of State financial assistance provided pursuant to the Act. The public authority and the county shall submit to the NJEDA such documents and information as requested by the NJEDA. The public authority and the county may be subject to a financial audit as to the need for and use of the State financial assistance. Records shall be retained and be made available to the NJEDA, Department and DEP for a minimum of three years after submission of the final requests for payment.

19:31-13.5 Assignment

The rights and obligations of the public authority and the county pursuant to the solid waste repayment agreement and the deficiency agreement shall not be assigned.

19:31-13.6 Severability

If any provision, clause or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

19:31-13.7 Use and disclosure of information

All documents, information and other submissions, when received by the Department, the DEP or the NJEDA are public records pursuant to N.J.S.A. 47:1A-1 et seq., as amended and supplemented by P.L. 2001, c.404, and any rules promulgated thereunder. The NJEDA shall make them available to persons who so request, to the extent required by New Jersey and/or Federal law and consistent with the confidentiality provisions therein.

19:31-13.8 Applicability

This subchapter establishes the procedures and requirements governing the application for State financial assistance under the Act, sets forth the criteria for determining eligibility and determines the terms and conditions of State financial assistance. Any county or public authority which seeks State financial assistance under the Act shall, at a minimum, comply with the requirements of this subchapter, as applicable.