

**CHAPTER 31
AUTHORITY ASSISTANCE PROGRAMS**

Authority

N.J.S.A. 34:1B-1 et seq.; and P.L. 2009, c. 90.

Source and Effective Date

R.2010 d.285, effective November 9, 2010.
See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 31, Authority Assistance Programs, expires on November 9, 2017. See: 43 N.J.R. 1203(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: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Chapter 31, Authority Assistance Programs, was readopted as R.2005 d.274, effective July 22, 2005. As a part of R.2005 d.274, Subchapter 5, Export Revolving Line of Credit; Subchapter 6, New Jersey Trade Adjustment Assistance Center; Subchapter 9, New Jersey Boat Industry Loan Guarantee Fund and 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and Providing for the Financing Thereof through the New Jersey Economic Development Authority, P.L.2001, c.401 were repealed, effective August 15, 2005. See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Subchapter 4, Downtown Beautification Program, was repealed by R.2009 d.38, effective January 20, 2009. See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).

Subchapter 9, Urban Transit Hub Tax Credit Program, was adopted as new rules by R.2009 d.53, effective February 2, 2009. See: 40 N.J.R. 6426(a), 41 N.J.R. 807(a).

Pursuant to P.L. 2008, c. 27, §10 (N.J.S.A. 34:1B-219) and by notice of administrative change, Subchapter 3, Energy Sales Tax Exemption Program, of Chapter 121 of Title 12A was recodified as Subchapter 13 of Chapter 31 of Title 19, effective January 29, 2009. See: 41 N.J.R. 1102(a).

Subchapter 5, InvestNJ Business Grant Program, and Subchapter 6, Main Street Business Assistance Program, were adopted as special new rules by R.2009 d.73, effective February 2, 2009. See: 41 N.J.R. 1103(a). Subchapter 5, InvestNJ Business Grant Program, and Subchapter 6, Main Street Business Assistance Program, were adopted as concurrent new rules by R.2009 d.181, effective May 4, 2009. See: 41 N.J.R. 2338(a).

Subchapter 14, Business Retention and Relocation Assistance Grant Program, was recodified from Subchapter 1 of N.J.A.C. 12A:2; Subchapter 15, Tax Credit Certificate Transfer Program, was recodified from Subchapter 1 of N.J.A.C. 12A:2A; Subchapter 16, Sales and Use Tax Exemption Program, was recodified from Subchapter 2 of N.J.A.C. 12A:2A; and Subchapter 17, Energy Sales Tax Exemption Program for Certain Counties, was recodified from Subchapter 4 of N.J.A.C. 12A:2A by R.2010 d.231, effective October 18, 2010. See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Chapter 31, Authority Assistance Programs, was readopted as R.2010 d.285, effective November 9, 2010. As a part of R.2010 d.285, Subchapter 5, InvestNJ Business Grant Program, was repealed, effective December 6, 2010. See: Source and Effective Date. See, also, section annotations.

Subchapter 4, Economic Redevelopment and Growth Program, was adopted as special new rules by R.2011 d.152, effective May 3, 2011. See: 43 N.J.R. 1372(a). Subchapter 4, Economic Redevelopment and Growth Program, was adopted as concurrent new rules by R.2012 d.030, effective January 6, 2012. See: 44 N.J.R. 307(a).

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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.

interest paid to third parties, ancillary infrastructure projects and infrastructure improvements in the public right-of-way unless funded by the municipality, and excluding any costs for which the project has received State grant funding.

“Eligible revenue” means any of the incremental revenues set forth in section 6 of P.L. 2009, c. 90 (N.J.S.A. 52:27D-489f).

“Equity” means cash, development fees, costs for project feasibility incurred within the 12 months prior to application, Federal or local grants, Federal tax credits, property value less any mortgages, and any other investment by the developer in the project deemed acceptable by the Authority in its sole discretion. Property value shall equal either the purchase price, provided the property was purchased pursuant to an arm’s length transaction within 12 months of application, or

the value as determined by a current appraisal acceptable to the Authority.

“Fiscal impact analysis” means the analysis to be undertaken by the Authority to determine if the project meets the requirement of providing a net positive economic benefit to the State. For the purposes of determining if the applicant fulfills the net positive economic benefit requirement, the analysis needs to demonstrate that the project’s net positive economic benefit equals at least 110 percent of the amount of grant assistance. The analysis will be an econometric model that uses project data provided by the developer, including, but not limited to: new and retained jobs, amount of capital investment, type of project, occupancy characteristics and location; and by using this information, shall generate an estimate of direct and indirect economic output, as deemed reasonable by the Authority, and projected eligible revenues.

This information may be supplemented by the use of industry accepted estimates, that is, U.S. Department of Commerce Regional Input-Output Modeling System data, when specific data is not available.

"Incentive grant" means reimbursement of all or a portion of the project financing gap of a redevelopment project.

"Infrastructure improvements in the public right-of-way" mean public structures or improvements located in the public right-of-way that are located within a project area or that constitute an ancillary infrastructure project and may include, but not be limited to, signalization and new interchanges, public parking structures, and pedestrian, bicycle-oriented and mass transit improvements; and public utilities such as water, sewer, electric and gas.

"Internal rate of return" means the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment.

"Local incentive grant" means a grant made pursuant to a redevelopment incentive grant agreement between a municipality and a developer, or a municipal ordinance authorizing a project to be undertaken by a municipal redeveloper, and which is subject to review by the Local Finance Board, in the Division of Local Government Services, in the Department of Community Affairs.

"Municipal redeveloper" means a municipal government or a redevelopment agency acting on behalf of a municipal government as defined in section 3 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-3) that is an applicant for a redevelopment incentive grant agreement.

"Net profit margin" means net income as a percentage of project sales value.

"Project area" or "redevelopment project area" means land or lands under common ownership or control which shall be located in a qualifying economic redevelopment and growth grant incentive area, including, but not limited to, control through a redevelopment agreement with a municipality pursuant to N.J.S.A. 40A:12A-1 et seq. or as otherwise established by a municipality.

"Project financing gap" means the part of the eligible project costs that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer contributed capital or equity which shall not be less than 20 percent of the eligible project cost, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources. When calculating the project financing gap, the factors set forth at N.J.A.C. 19:31-4.5(a)4, including, but not limited to, return on investment, net profit margin and cash on cash yield will be considered. The project financing gap may be increased by the cost of capital necessary to raise an amount of current capital sufficient to complete the project when combined with all other sources of capital in recognition that the incremental eligible revenues will be reimbursed over an estimated period of years.

"Qualifying economic redevelopment and growth grant incentive area" or "incentive area" means Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a center as designated by the State Planning Commission; an area zoned for development pursuant to a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L. 1968, c. 404 (N.J.S.A. 13:17-6) or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L. 1968, c. 404 (N.J.S.A. 13:17-21); any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), within the boundaries of the Hackensack Meadowlands District as delineated in section 4 of P.L. 1968, c. 404 (N.J.S.A. 13:17-4); a pinelands regional growth area, a pinelands town management area, a pinelands village, or a military and Federal installation area established pursuant to the pinelands comprehensive management plan adopted pursuant to P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.); a transit village; and Federally owned land approved for closure under a Federal Base Realignment Closing Commission action.

"Redevelopment incentive grant agreement" means an agreement between the State Treasurer, the Authority and a developer, or a municipality and a developer, or a municipal ordinance authorizing a project to be undertaken by a municipal redeveloper, under which, in exchange for the proceeds of an incentive grant, the developer agrees to perform any work or undertaking necessary for a redevelopment project, including the clearance, development or redevelopment, construction, or rehabilitation of any structure or improvement of commercial, industrial, residential, or public structures or improvements within a qualifying economic redevelopment and growth grant incentive area.

"Redevelopment project" or "project" means a specific work or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including lands under water, riparian rights, space rights and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, undertaken by a developer within a project area and any ancillary infrastructure project associated therewith.

"Retained job" means a position that currently exists in New Jersey and is filled by a current employee but which, as certified by the business's chief executive officer, is at risk of being lost to another state or country.

"Revenue increment base" means the amounts of all eligible revenues from sources within the redevelopment project area in the calendar year preceding the year in which the redevelopment incentive grant agreement is executed, as certified by the State Treasurer for State revenues.

"Soft costs" means all costs associated with financing, design, engineering, legal, real estate commissions, furniture, or office equipment with a useful life of less than five years, provided they do not exceed 20 percent of eligible project costs.

"Transit village" means a community with a bus, train, light rail, or ferry station that has developed a plan to achieve its economic development and revitalization goals and des-

igned by the New Jersey Department of Transportation as a transit village.

Amended by R.2012 d.044, effective February 21, 2012.
See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Rewrote definition "Qualifying economic redevelopment and growth grant incentive area".

19:31-4.3 Eligibility criteria

(a) The Authority, in consultation with the Treasurer for a State grant, shall conduct a review to determine eligibility for any State or local incentive grant, wherein the following must apply:

1. The redevelopment project must be located in a qualifying economic redevelopment and growth grant incentive area, provided, however, that a State incentive grant shall not be given for a project in an incentive area that qualifies as such solely by virtue of being a transit village;

2. The developer must not have commenced any construction at the site of a proposed redevelopment project prior to submitting an application, except as set forth in (a)2i or ii below. For purposes of this paragraph, construction shall have commenced if the project has received site plan approval and started site preparation or utility installation.

i. In the event construction has commenced on a proposed redevelopment project, the project may be eligible if the Authority, at its sole discretion, determines that the project would not be completed otherwise; or

ii. In the event the project is to be undertaken in phases, a developer may apply for phases for which construction has not yet commenced, subject to N.J.A.C. 19:31-4.5(a)2;

3. For any State incentive grant project consisting of newly-constructed residential units, the developer shall be required, pursuant to P.L. 2008, c. 46 (N.J.S.A. 52:27D-329.9), to reserve at least 20 percent of the residential units constructed for occupancy by low or moderate income households, as those terms are defined in section 4 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-304), with affordability controls as required under the rules of the Council on Affordable Housing, unless the municipality in which the property is located has received substantive certification from the council and such a reservation is not required under the approved affordable housing plan, or the municipality has been given a judgment of repose or a judgment of compliance by the court, and such a reservation is not required under the approved affordable housing plan;

4. A project financing gap exists; and

5. Pursuant to a fiscal impact analysis, for a State grant, the overall public assistance provided to the project will result in net benefits to the State.

19:31-4.4 Application submission requirements for State incentive grants

(a) A developer that submits an application to the Authority for a State incentive grant shall indicate on the application

whether it is also applying for a local incentive grant. In each instance where an applicant indicates that it is also applying for a local incentive grant, the EDA shall forward a copy of the application to the municipality wherein the redevelopment project is to be located so that the local incentive grant may be reviewed and approved by municipal ordinance. A developer or municipal redeveloper that submits an application for a local incentive grant shall indicate on the application whether it is also applying for a State incentive grant.

(b) A developer seeking a State incentive grant shall submit to the Authority the following information in its application:

1. The name of the business;
2. The contact information of the business;
3. Prospective future address of the business (if different);
4. The type of the business;
5. Principal products and services and three-digit North American Industry Classification System number;
6. The New Jersey tax identification number;
7. The Federal tax identification number;
8. An anticipated construction schedule;
9. Estimated eligible project costs, including any State or local grant funding to the project, and proposed terms of financing, including projected internal rate of return, net margin, return on investment and cash on cash yield;
10. Estimates of the revenue increment base and projection of the eligible revenues for the project, and the assumptions upon which those estimates are made;
11. For certain projects consisting of newly-constructed residential units, a certification that it meets the requirements of N.J.A.C. 19:31-4.3(c);
12. Estimated costs to the municipality resulting from the project;
13. Certification that the business applying for the program is not in default with any other program administered by the State of New Jersey;
14. Disclosure of legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
15. Submission of an application and fee for a tax clearance certificate pursuant to P.L. 2007, c. 101;
16. A list of all development subsidies, as defined by The Development Subsidy Job Goals Accountability Act, P.L. 2007, c. 200 (N.J.S.A. 52:39-1 et seq.), that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received. Examples of development subsidies are tax bene-

fits from programs authorized under P.L. 2004, c. 65; P.L. 1996, c. 26; and P.L. 2002, c. 43;

17. The status of control of the entire redevelopment project site, shown for each block and lot of the site as indicated upon the local tax map;

18. A list and status of all required State and Federal government permits that have been issued for the redevelopment project, or will be required to be issued pending resolution of financing issues, as well as of all local planning and zoning board approvals, that are required for the redevelopment project;

19. A description of how the project addresses the factors contained in N.J.A.C. 19:31-4.6(b);

20. A description of how the green building standards set forth in the green building manual prepared by the Department of Community Affairs, pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6), are to be incorporated into the proposed project including use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction, as listed on the EDA website at www.njeda.com;

21. A copy of a letter of support from the governing body of the municipality in which the proposed redevelopment project is located; and

22. Any other necessary and relevant information as determined by the applicant or the Authority for a specific application.

19:31-4.5 Financing gap and fiscal impact analysis

(a) The Authority, in consultation with the State Treasurer, shall review the proposed redevelopment project costs and evaluate and validate the project financing gap estimated by each developer applying for a State incentive grant, as follows:

1. The Authority will evaluate proposed project costs against reasonable costs as noticed on the EDA website at www.njeda.com for the standard of review, which shall include, but not be limited to, construction, tenant fit out, consultants, rental rates, rates of return and vacancy allowances;

2. For a redevelopment project involving rehabilitation or improvement of an existing building(s), the costs of land acquisition and rehabilitation shall not exceed 100 percent of the replacement cost for new construction, exclusive of any environmental remediation costs. When evaluating a redevelopment project involving rehabilitation or improvement of existing building(s), if a developer spends more than 50 percent of the total cost of acquisition of the building(s) on such rehabilitation or improvement, then the cost of acquisition shall be included in the eligible project costs. With respect to the Authority's evaluation of a rede-

velopment project pursuant to the requirements of N.J.A.C. 19:31-4.3(a)2i, a developer's future expenditures will have to be at least 50 percent of the project costs previously expended as of its application date in order for the Authority to include the costs expended prior to the application date to be included in the eligible project costs;

3. For large, multi-phased projects that are built sequentially over time, the EDA shall only evaluate and validate the project financing gap on phases of the project with funding commitments; and

4. The financing gap analysis shall include, but not be limited to, an evaluation of the eligible project costs, proposed rental rates, vacancy rates, internal rate of return, net profit margin, return on investment and cash on cash yield in comparison to market ranges for such items, as noticed on the EDA website at www.njeda.com or, in the Authority's sole discretion, in comparison to alternative financing structures for a comparable project available to the developer or its tenants.

(b) The Authority, in consultation with the State Treasurer, shall undertake the fiscal impact analysis by determining whether the overall public assistance provided to the proposed redevelopment project will result in net positive economic benefits to the State for a period equal to 75 percent of the useful life of the project not to exceed 20 years.

(c) In determining whether the project meets the net positive economic benefits analysis, the Authority's consideration shall include, but not be limited to, the State taxes paid directly by and generated indirectly by the developer, taxes paid directly or generated indirectly by new or retained jobs, and peripheral economic growth caused by the project, provided that such determination shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority.

(d) For the calculation of new revenues in predominantly retail projects in the net positive economic benefits analysis, the following weighting criteria shall be used:

1. When a project is proximate to a neighboring state jurisdiction (that is, Pennsylvania, Delaware, New York) and the project can demonstrate substantial increased incremental tax revenue to the State of New Jersey from other jurisdictions through a marketing analysis provided by the developer, 100 percent of the projected incremental ongoing sales tax revenue will be factored in the analysis;

2. When a project is a destination entertainment and retail facility (that is, a project which contains unique retail establishments, entertainment and/or sports venues) and the project can demonstrate substantial increased incremental tax revenue to the State of New Jersey from other jurisdictions through a marketing analysis provided by the developer, 100 percent of the projected incremental ongoing sales tax revenue will be factored in the analysis;

3. For projects which are significantly retail in nature, but do not meet either (d)1 or 2 above:

- i. Ongoing State sales tax revenue will be calculated at 0 percent value;
- ii. One-time construction related taxes will be calculated at 100 percent value; and
- iii. Ongoing other tax revenues, for example, corporation business taxes and gross income taxes, will be calculated at 66 percent value.

(e) The State Treasurer will approve or disapprove the redevelopment project costs, the financing gap, and the net positive economic benefits.

19:31-4.6 Approval of application for State incentive grant

(a) The Authority and the State Treasurer may approve an application only if they make a finding that the State revenues to be realized from the redevelopment project will be in excess of the amount necessary to reimburse the developer for the portion of the project financing gap allocable to the State incentive grant. This finding may be made by an estimation based upon the professional judgment of the Chief Executive Officer of the Authority and the State Treasurer.

(b) In deciding whether or not to recommend entering into a redevelopment incentive agreement, the Chief Executive Officer shall consider the following factors prior to approval:

1. The economic feasibility of the redevelopment project;
2. The extent of economic and related social distress in the municipality and the area to be affected by the redevelopment project;
3. The degree to which the redevelopment project will advance State, regional and local development and planning strategies;
4. The likelihood that the redevelopment project shall, upon completion, be capable of generating new tax revenue in an amount in excess of the amount necessary to reimburse the developer for project costs incurred as provided in the redevelopment incentive grant agreement;
5. The relationship of the redevelopment project to a comprehensive local development strategy, including other major projects undertaken within the municipality;
6. The need of the redevelopment incentive grant agreement to the viability of the redevelopment project; and
7. The degree to which the redevelopment project enhances and promotes job creation and economic development.

(c) The decision whether or not to approve an application and enter into a redevelopment incentive grant is solely within the discretion of the Authority and the State Treasurer, provided they both agree to enter into an agreement.

(d) Except for a local redevelopment incentive grant agreement with a municipal redeveloper, in no event shall the combined amount of the reimbursements under the redevelopment incentive grant agreements with the State and municipality exceed 20 percent of the eligible cost of the project.

19:31-4.7 State incentive grant agreement

(a) Upon approval of the application by the Authority and the State Treasurer, the Authority and the developer will execute a commitment letter providing information specific to the grant amount and containing conditions that must be met prior to receiving the grant. Upon a receipt of evidence from the developer that it has control of the redevelopment project site and offers of financing, which may be conditioned upon execution of the grant agreement, and that it has met any other conditions set forth in the commitment letter, the Authority and the State Treasurer may enter into a State redevelopment incentive grant agreement with a developer for the reimbursement of incremental State revenues directly realized from businesses operating on the redevelopment project premises.

(b) The Chief Executive Officer of the Authority, in consultation with the State Treasurer, shall negotiate the terms and conditions of any State redevelopment incentive agreement. The State redevelopment incentive grant agreement shall include, but not be limited to, the following terms and conditions as determined by the Authority:

1. The maximum percentage reimbursement amount, the maximum aggregate dollar amount of the incentive grant to be awarded the developer, the maximum annual percentage of reimbursement, the particular tax or taxes to be utilized from those listed in N.J.A.C. 19:31-4.8(a), the order in which multiple taxes will be applied to determine the incentive grant amount, and, for a project receiving an incentive grant in excess of \$50 million, the amount of the negotiated repayment to the State which shall be up to the amount of the maximum aggregate dollar amount of the reimbursement. If the actual project costs are less than the project costs set forth in the application, the percentage reimbursement amount will be based on the actual project costs. For the purposes of determining the amount and timing of any repayment due for projects receiving an incentive grant in excess of \$50 million, the Authority shall consider such factors as the financial structure of the project, risk of the project, developer returns, magnitude of State support, as well as the returns of various types of revenue generating projects, that is, retail, commercial and/or hotel. If the project does not produce the anticipated amount of incremental taxes in a given year, the developer shall only receive the approved percentage of actual tax revenue created;

by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under section 3 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-209).

“Approval letter” means the letter sent by the Authority that sets forth the conditions subsequent to the approval, the forecasted schedule for completion and occupancy of the project, the date the 10-year eligibility period is scheduled to commence, the estimated amount of tax credits, and other such information which further the purposes of P.L. 2007, c. 346. The approval letter will require the applicant to submit progress information by a certain date in order to preserve the approval of the tax credits.

“Authority” means the New Jersey Economic Development Authority.

“Board” means the Board of the New Jersey Economic Development Authority.

“Business” means a corporation that is subject to the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15) or N.J.S.A. 17B:23-5, or is an entity classified as a partnership, an S corporation, or a limited liability company. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by the affiliate or full-time employees of an affiliate are necessary to evidence compliance with eligibility requirements.

“Capital investment” in a qualified business facility and a qualified residential project means expenses incurred for the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility or improvement to real property, including associated soft costs. Capital investment includes obtaining and installing furnishings and machinery, apparatus or equipment for the operation of a business in a building, structure, facility or improvement to real property, site-related utility and transportation infrastructure improvements, plantings or other environmental components required to attain the level of silver rating or above in the LEED® building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source including N.J.S.A. 52:27H-80 et seq. (The United States Green Building Council has developed the Leadership in Energy & Environmental Design (LEED) Green Building Rating System for measuring the energy efficiency and environmental sustainability of buildings. The LEED Rating System is a third party certification program and the nationally accepted benchmark for the design, construction and opera-

tion of high performance buildings.) Vehicles and heavy equipment not permanently located in the building, structure, facility or improvement shall not constitute a capital investment. Also included is remediation of the qualified business facility or qualified residential project site, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. With respect to commercial development, to be included the capital investment must be commenced after the January 13, 2008 effective date of the Act and the applicant submits its documentation for approval of its credit amount by the eighth anniversary of that date. With respect to residential development, to be included the capital investment must be commenced after July 28, 2009, the effective date of P.L. 2009, c. 90, and the applicant submits its documentation for approval of its credit amount by the eighth anniversary of that date, that is, by July 28, 2017. For purposes of this subchapter, “commenced” shall mean that the project consisting of construction of a new building shall not have progressed beyond site preparation; the project consisting of acquisition of an existing building shall not have closed title; and the project consisting of renovation or reconstruction of an existing building shall not have commenced construction.

“Developer” means, with respect to a qualified business facility, a business that intends to construct and lease a business facility. A developer may seek to receive approval that the facility will constitute a qualified business facility conditioned upon identification of tenants that will have qualifying employment and pro formas indicating that the capital investment requirements will be met.

“Eligibility period” means the 10-year period in which a business may claim an urban transit hub tax credit, beginning with the tax period in which the Authority accepts the certification of the business that it has met the capital investment and employment qualifications, if any, of the Program.

“Eligible municipality” means a municipality: which qualifies for State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.) or which was continued to be a qualified municipality thereunder pursuant to P.L. 2007, c. 111; and in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation, which is taxable and that which is tax exempt. For State fiscal year 2008, the eligible municipalities are: Camden, East Orange, Elizabeth, Jersey City, Newark, New Brunswick, Paterson, Trenton and Hoboken. For subsequent State fiscal years, the Authority, after consultation of the Department of Community Affairs, shall annually publish at www.newjerseybusiness.gov a notice listing the eligible municipalities.

“Full-time employee” means a person employed by the business 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, as determined by the Authority, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.) 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, as determined by the Authority, and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or an employee who is a resident of another state but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or who is a partner of a business 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 determined by the Authority 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. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

"Full-time employee at the qualified business facility" means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time at the site, or who spends any other period of time generally accepted by custom or practice as full-time employment at the site, as determined by the Authority.

"Leasable area" means rentable area of the building as calculated pursuant to the measuring standards of the project. This standard will be defined in the lease for tenant applicants. The rentable area measures the tenant's pro rata portion of the entire office floor, including public corridors, restrooms, janitor closets, utility closets and machine rooms used in common with other tenants, but excluding elements of the building that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building and is not affected by changes in corridor sizes or configuration.

"Letter of compliance" means the letter issued annually by the Authority pursuant to N.J.A.C. 19:31-9.14 that must accompany the use of the tax credit certificate.

"Light rail station" means a location where passengers board or alight River Line Light Rail, the Hudson-Bergen Light Rail, the Newark Light Rail services, or any other light rail service owned and/or operated by New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation in the State of New Jersey. Light rail is a transit mode with a lighter volume traffic capacity compared to commuter rail service and characterized by lighter vehicles operating in one or two-car trains on fixed rails, powered by electric or diesel, and not regulated by the Federal Railroad Administration unless covered by a waiver

for shared-use operation of freight and light rail passenger service.

"Mixed use project" means a project comprising both a qualified business facility and a qualified residential project, provided that the residential project does not need to be the predominant part of the mixed use project if it meets the criteria set forth in N.J.A.C. 19:31-9.3(a)5.

"Net leasable area" means the usable area or actual occupiable area of a building, a floor or an office suite. The amount of usable area can vary over the life of a building as corridors expand and contract and as floors are remodeled, and thus is not fixed for the life of a building as would be the case with leasable area.

"New full-time position" means a position created by the business at the qualified business facility that did not previously exist in this State. New full-time position shall also include new full-time positions that a business creates after receipt of approval pursuant to N.J.A.C. 19:31-97 that are transferred to the qualified business facility upon completion thereof.

"Partnership" means an entity classified as a partnership for Federal income tax purposes.

"Professional employer organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.).

"Program" means the Urban Transit Hub Tax Credit Program created pursuant to P.L. 2007, c. 346 and provided in this subchapter.

"Progress information" means the information that must be submitted pursuant to N.J.A.C. 19:31-9.8.

"Project" or "hub project" means employment by the business of a minimum of 250 full-time employees at a facility that meets the capital investment criteria of the Act in a qualified business facility located within a designated urban transit hub in an eligible municipality.

"Qualified business facility" means any building, complex of buildings or structural components of buildings, and all machinery and equipment as defined under capital investment, located within a designated urban transit hub in an eligible municipality, used in connection with the operation of a business.

"Qualified residential project" means any building, complex of buildings or structural components of buildings, consisting predominantly of residential units, located in an urban transit hub within an eligible municipality.

"Rail station" means a rail station, including light rail stations, of the New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Cor-

poration, but shall not include any rail station located at an international airport.

“Residential developer” means a business that intends to make or acquire capital investments in a qualified residential project pursuant to sections 34 and 35 of P.L. 2009, c. 90.

“Residential unit” means a residential dwelling unit such as a rental apartment, a condominium or cooperative unit, a hotel room, or a dormitory room.

“Site preparation” means the clearing, excavation, or removal of existing buildings, structures, vegetation, or facilities, and the site grading or other earth work, which is necessary for the construction of a qualified business facility.

“Soft costs” means all costs associated with financing, design, engineering, legal, real estate commissions, furniture, or office equipment with a useful life of less than five years, provided they do not exceed 20 percent of total capital investment.

“Tax accounting period” or “tax privilege period” or “tax period” shall mean tax year for purposes of this chapter.

“Tenant” means a business that is a lessee or owner of a condominium in a qualified business facility and does not include a lessee or owner of a condominium in a qualified residential facility.

“Urban transit hub” means property located within a one-half mile radius surrounding the mid point of a New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation rail station platform area, including all light rail stations, and property located within a one-mile radius of the mid point of the platform area of such a rail station if the property is in a qualified municipality under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.); property located within a one-half mile radius surrounding the mid point of one of up to two underground light rail stations’ platform areas that are most proximate to an interstate rail station; and property adjacent to, or connected by rail spur to, a freight rail line if the business uses that freight line at any rail spur located adjacent to or within a one-mile radius surrounding the entrance to the property, provided the property is located in the eligible municipality, if, as part of its regular course of business, as determined by the Authority, the business utilizes that freight rail line for loading and unloading freight cars on trains delineated by the Authority pursuant to subsection e. of section 3 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-3e). A property, which is partially included within the radius, shall only be considered part of the hub if over 50 percent of its land area falls within the radius. In the case of a rail station with multiple rail lines, a separate midpoint shall be determined for each such rail line. Once the hubs have been delineated, the Authority will post eligible rail stations and corresponding midpoints on the website at www.newjerseybusiness.gov. The posting will be

updated if the eligible rail stations change and to reflect changes in station midpoints.

“Urban transit hub tax credit” or “tax credit” means the tax credit permitted under P.L. 2007, c. 346, as amended by P.L. 2009, c. 90 and this subchapter, which may be applied against the tax liability otherwise due for corporation business tax or insurance premiums tax pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5.

“Urban transit hub tax credit transferee” or “tax credit transferee” means if the business transfers its tax credits by first obtaining and then selling or assigning its tax credits as evidenced by a tax credit transfer certificate, then the owner of the tax credits, including any subsequent owners of the tax credits.

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Rewrote definitions “Affiliate”, “Business”, “Capital investment”, “Full-time employee”, “Light rail station”, “Rail station”, “Urban transit hub” and “Urban transit hub tax credit”; substituted definition “Approval letter” for definition “Agreement” or “project agreement”; rewrote definition “Approval letter”; added definitions “Developer”, “Full-time employee at the qualified business facility”, “Letter of compliance”, “Professional employer organization”, “Progress information”, “Qualified residential project”, “Residential developer”, “Residential unit”, “Soft costs” and “Tenant”; in definition “Eligibility period”, inserted “, if any.”; and in definition “Eligible municipality”, substituted the second occurrence of “was” for “is” preceding “exempt from”, and inserted “during tax year 2006”.

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Added definitions “Mixed use project” and “Urban transit hub tax credit transferee”; in definition “Qualified residential project”, substituted “consisting predominantly” for “including a mixed use project, the majority of which, as measured by square footage, consists”; in definition “Urban transit hub”, inserted “if the business uses that freight line at any rail spur located adjacent to or within a one-mile radius surrounding the entrance to the property, provided the property is located in the eligible municipality.”, and in definition “Urban transit hub tax credit”, substituted “or” for a comma preceding and deleted “or gross income tax” following “insurance premiums tax”.

19:31-9.3 Eligibility criteria

(a) In order to be eligible to be considered for an urban transit hub tax credit:

1. For a qualified business facility, if the business is other than a tenant, the business shall:

i. Make or acquire capital investments in a qualified business facility totaling not less than \$50,000,000. The capital investments of the owner shall include capital investments made by a tenant and may include any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant(s), but only to the extent necessary to meet the owner’s minimum capital investment of \$50,000,000 provided that the owner so indicate in his application or certification

and further provided that such tenant allowance or tenant improvements meet the definition of capital investment;

ii. Employ not fewer than 250 full-time employees at the qualified business facility; and

iii. Demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit, equaling at least 110 percent of the approved tax allocation amount, to both the State and the eligible municipality for the period equal to 75 percent of the useful life of the investment, not to exceed 20 years.

2. If the business is a tenant in a qualified business facility:

i. The owner of the qualified business facility shall make or acquire capital investments, or in a mixed-use facility capital and residential capital investments in the facility totaling not less than \$50,000,000, as calculated in accordance with (a)1i above;

ii. The tenant shall occupy a leased area of the qualified business facility that represents at least \$17,500,000 of the capital investment in the facility, as calculated pursuant to (b) below;

iii. The tenant business and up to two other tenants shall employ not fewer than 250 full-time employees in the aggregate at the qualified business facility;

iv. The business shall lease the qualified business facility for a term of not less than 10 years; and

v. Except for tenants of a qualified business facility for which the owner has previously demonstrated a net positive benefit and received approval of the project site or approval of tax credits, the business shall demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit, equaling at least 110 percent of the approved tax allocation amount, to both the State and the eligible municipality for the period equal to 75 percent of the useful life of the term of the tenant's lease, not to exceed 20 years. For purposes of this evaluation, the tenant may include the benefit derived from the owner's capital investment, but not from employees other than those referenced in (a)2iii above. For purposes of this evaluation, the tenant may include the benefit derived from the owner's capital investment and from all employees located in the qualified business facility.

3. For a qualified residential project, the residential developer shall:

i. Make or acquire capital investments totaling not less than \$50,000,000 in a qualified residential project. This requirement may be met by the residential developer or by one or more of its affiliates;

ii. Demonstrate to the Authority that the qualified residential project is likely to be realized with the provision of tax credits at the level requested, but is not likely to be accomplished by private enterprise without the tax credits; and

iii. Not be required to meet the employment requirements required for a qualified business facility.

4. For a qualified mixed use facility, the business shall:

i. Make or acquire capital investments in a qualified business facility that is part of a mixed use project provided that the qualified business facility represents at least \$17,500,000 of the total capital investment in the mixed use project and the total capital investment in the mixed use project of which the qualified business facility is a part is not less than \$50,000,000;

ii. Employ not fewer than 250 full-time employees at the qualified business facility; and

iii. Demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit, equaling at least 110 percent of the approved tax allocation amount, to both the State and the eligible municipality for the period equal to 75 percent of the useful life of the investment, not to exceed 20 years.

5. For a qualified residential project that includes a mixed use project, the developer shall:

i. Make or acquire capital investments in a qualified residential project that is part of a mixed use project provided that the qualified residential project represents at least \$17,500,000 of the total capital investment in the mixed use project and the total capital investment in the mixed use project of which the qualified residential project is a part is not less than \$50,000,000;

ii. Demonstrate to the Authority that the qualified residential project is likely to be realized with the provision of tax credits at the level requested, but is not likely to be accomplished by private enterprise without the tax credits; and

iii. Not be required to meet the employment requirements required for a qualified business facility.

(b) In order to determine whether the tenant's leasable area of the qualified business facility satisfies the capital investment eligibility threshold, the Authority shall multiply the owner's capital investment by the fraction, the numerator of which is the leased net leasable area and the denominator of which is the total net leasable area. Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of \$50,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified business facility.

(c) Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

(d) Because a business may include an affiliate or affiliates, the capital investment and employment requirements may be met by the business or by one or more of its affiliates, and the entity satisfying the capital investment requirement does not need to be the same as the entity satisfying the employment requirement.

(e) A business shall be treated as owner of a qualified business facility or a qualified residential project if it holds title to the facility, whether it ground leases the land underlying the facility for at least 50 years or holds title to the land underlying the facility.

(f) A business that is investing in a qualified business facility or qualified residential project may apply for tax credits valued at less than the total amount of the capital investments in its project.

(g) In determining whether a proposed capital investment will yield a net positive benefit, the transfer of an existing job from one location in the State to another may be considered as the creation of a new job if:

1. The business proposes to transfer existing jobs to a municipality in the State as part of a consolidation of business operations from two or more other locations that are not in the same municipality whether in-State or out-of-State; or

2. The business's chief executive officer, or equivalent officer, submits a certification pursuant to N.J.A.C. 19:31-9.5(a)3iv.

(h) For purposes of mixed use projects or qualified residential projects, an eligible municipality shall have the option, pursuant to section 18 of P.L. 2008, c. 46 (N.J.S.A. 52:27D-329.9), of deciding the percentage of newly-constructed residential units within the project, up to 20 percent of the total, required to be reserved for occupancy by low or moderate income households, as those terms are defined under the rules of the Department of Community Affairs concerning affordable housing. For a mixed use project or a qualified residential project that has received preliminary or final site plan approval prior to the effective date of P.L. 2011, c. 89, the percentage shall be deemed to be the percentage, if any, of units required to be reserved for low or moderate income households in accordance with the terms and conditions of such approval.

(i) A developer of a mixed use project shall be allowed a credit pursuant to (a)4 or 5 above, but not both.

Amended by R.2010 d.177, effective August 16, 2010.
See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Rewrote the section.
Amended by R.2012 d.044, effective February 21, 2012.
See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

In (a)3ii, inserted "and" at the end; in (a)3iii, substituted a period for "; and" at the end; deleted (a)3iv; and added (a)4, (a)5 and (g) through (i).

19:31-9.4 Restrictions

(a) A business shall not be allowed urban transit hub tax credits if:

1. The business participates in a Business Employment Incentive Program grant pursuant to P.L. 1996, c. 26 (N.J.S.A. 34:1B-124 et seq.) relating to the same capital investment, employees, and site that qualify the business for urban transit hub tax credits; or

2. The business receives assistance from the Business Retention and Relocation Assistance Grant Program pursuant to P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.).

(b) A business that is allowed a tax credit under this section shall not be eligible for incentives authorized by the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.).

(c) A business shall not qualify for a tax credit based upon capital investment and employment of full-time employees, if that capital investment or employment was the basis for which a grant was provided to the business pursuant to the InvestNJ Business Grant Program Act, P.L. 2008, c. 112 (N.J.S.A. 34:1B-237 et seq.).

(d) Capital investments in a qualified business facility must be incurred after the effective date of P.L. 2007, c. 346, which is January 13, 2008, and must be applied for within five years of January 13, 2008. An approved business must submit its documentation for approval of its credit amount before the end of the eighth year after the effective date, and thus, before January 13, 2016. The credit amount allowed for a tax period ending after January 16, 2016 during which documentation of a business' credit amount remains unapproved shall be forfeited, although credit amounts for the remainder of the 10 years shall remain available to it. This eighth year limit is expected to afford businesses applying toward the end of the five-year application period at least three years to complete the project. Capital investments in a qualified residential facility must be incurred after the effective date of P.L. 2009, c. 90, which is July 28, 2009, and be applied for within five years of July 28, 2009. A residential developer must submit its documentation for approval of its credit amount within eight years after July 28, 2009. The credit amount allowed for a tax period ending after July 28, 2017 during which documentation of a business' credit amount remains unapproved shall be forfeited, although credit amounts for the remainder of the 10 years shall remain available to it. This eight-year limit is expected to afford businesses applying toward the end of the five-year application period at least three years to complete the project.

(e) If a business participating in a Business Employment Incentive Program grant for the same capital investment, employees, and site or receiving assistance from the Business

Retention and Relocation Assistance Grant Program, InvestNJ Business Grant Program, or incentives authorized by the Municipal Rehabilitation and Economic Recovery Act, seeks to qualify for urban transit hub tax credits, it shall first repay and terminate assistance pursuant to the rules governing the Business Employment Incentive Program, Business Retention and Relocation Assistance Grant Program, InvestNJ Business Grant Program or Municipal Rehabilitation and Economic Recovery Act, as applicable.

Amended by R.2010 d.177, effective August 16, 2010.
See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

In (a)1, inserted "or" at the end; in (a)2, substituted a period for "; or" at the end; deleted (a)3; added new (c); recodified former (c) and (d) as (d) and (e); rewrote (d); and in (e), inserted "InvestNJ Business Grant Program, or incentives authorized by the Municipal Rehabilitation and Economic Recovery Act," and "InvestNJ Business Grant Program or Municipal Rehabilitation and Economic Recovery Act," and substituted a comma for "or" following the second occurrence of "Business Employment Incentive Program".

19:31-9.5 Application submission requirements

(a) Each application to the Authority made by an owner, tenant or residential developer shall include the following information in an application format prescribed by the Authority:

1. Business information, including information on all affiliates contributing either full-time employees or capital investment or both to the project, shall include the following:

- i. The name of the business;
- ii. The contact information of the business;
- iii. Prospective future address of the business (if different);
- iv. The type of the business;
- v. Principal products and services and three-digit North American Industry Classification System number;
- vi. The New Jersey tax identification number;
- vii. The Federal tax identification number;
- viii. The total number of employees in New Jersey;
- ix. The total list of New Jersey operations;
- x. Certification that the business applying for the program is not in default with any other program administered by the State of New Jersey;
- xi. Disclosure of legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 12A:4-12;
- xii. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;
- xiii. A list of all the development subsidies, as defined by P.L. 2007, c. 200, that the applicant is request-

ing or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received. Examples of development subsidies are tax benefits from programs authorized under P.L. 2004, c. 65; P.L. 1996, c. 26; and P.L. 2002, c. 43;

xiv. In the event that the business is a partnership and chooses to allocate the revenue realized from the sale of the tax credits other than as a proportion of the owners' distributive share of income or gain of the partnership, the business shall provide an agreement that sets forth the allocation among the owners. This agreement will be submitted to the Director of the Division of Taxation in the Department of Treasury by such time and with such information as the Director may require; and

xv. Any other necessary and relevant information as determined by the Authority for a specific application;

2. Project information shall include the following:

- i. An overall description of the proposed project;
- ii. A description of the capital investments planned by the business, if other than a tenant at the proposed qualified business facility, or, if the business is a tenant, represented by the leased area of the business, at the proposed qualified business facility; and if the business is a residential developer, a description of the capital investment planned to be made or acquired in a qualified residential project;
- iii. The estimated value of the capital investment;
- iv. A certification from the owner, with supporting evidence, that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive economic benefit, equaling 110 percent of the requested tax allocation amount, to the State and the eligible municipality for the period equal to 75 percent of the useful life of the investment or the term of the tenant's lease, not to exceed 20 years, taking into account the criteria listed at N.J.A.C. 19:31-9.7(c). The applicant may be required to submit any other information required by the Authority to conduct an analysis of the economic impact of the project;
- v. If the capital investment is a qualified residential project, a pro forma analysis demonstrating that the project is likely to be realized with the provision of the tax credits at the level requested to be realized but is not likely to be accomplished by private enterprise without the credits;
- vi. A description of how the green building standards to be set forth in the green building manual prepared by the Department of Community Affairs, pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6) are to be incorporated into the proposed project including use of renewable energy, energy-efficient technology, and non-renewable resources in

order to reduce environmental degradation and encourage long-term cost reduction;

vii. Identification of the site of the proposed qualified business facility or qualified residential project, including the block and lot of the site as indicated upon the local tax map and evidence that the site is located wholly or partially (over 50 percent) within an urban transit hub in the form of a survey or other documentation acceptable to the Authority;

viii. A project schedule that identifies projected move dates for the proposed qualified business facility or qualified residential project;

ix. If the capital investment is a qualified business facility, a schedule of short-term and long-term employment projections of the business in the State taking into account the proposed project;

x. The terms of any lease agreements (including, but not limited to, information showing net leasable area by the business if a tenant and total net leasable area; or if the business is an owner, information showing net leasable area not leased to tenants and total net leasable area) and/or details of the purchase or building of the proposed project facility; and, if an application involves intra-State job transfers, a full economic analysis of all locations under consideration by the company and copies of all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations and, to the extent they exist, for the potential out-of-State location alternatives;

xi. The total number of anticipated new full-time positions that would be created in New Jersey and occupy the qualified business facility and the total number of full-time employees that would occupy the qualified business facility, and the distribution of such totals identified by business entity; and

xii. Any other necessary and relevant information as determined by the Authority for a specific application; and

3. Employee information shall include the following:

i. A written certification that the employees that are the subject of this application will be full-time employees at the qualified business facility and are subject to withholding as provided in the New Jersey Gross Income Tax Act;

ii. The average annual wage and benefit rates of full-time employees and new full-time positions at the qualified business facility;

iii. To the extent a tenant is meeting the employment requirement together with up to two other tenants in the qualified business facility, a submission from the other tenants relating to (a)3i above;

iv. For the purpose of N.J.A.C. 19:31-9.3(g)2, a written certification by the chief executive officer, or equivalent officer, that the existing jobs are at risk of leaving the State and that the chief executive officer, or equivalent officer, has reviewed the information submitted that the representations contained therein are accurate, and the business intends to employ not fewer than 500 full-time employees in the qualified business facility;

v. Evidence that the applicant has provided the application information required by the State Treasurer for a development subsidy such as the tax credits, pursuant to P.L. 2007, c. 200; and

vi. Any other necessary and relevant information as determined by the Authority for a specific application.

(b) A developer may apply to have a building approved as a qualified business facility by submitting the information required pursuant to (a)2i through ix above. Any tenant seeking an approval of tax credits for a qualified business facility so approved will be required to submit the information required pursuant to (a)1, 2v through ix and 3 above.

(c) The business or developer applying to the program shall submit an application fee set forth at N.J.A.C. 19:31-2.7.

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

In the introductory paragraph of (a), substituted a comma for "or a" following "owner" and inserted "or residential developer"; in (a)1xiv, substituted "revenue realized from the sale of the tax credits" for "amount of credit" and a semi-colon for the comma following "require", and deleted "which at minimum must conform with N.J.A.C. 19:31-9.8(b)10" following "owners"; rewrote (a)2ii; added new (a)2iv through (a)2vi; recodified former (a)2iv through (a)2ix as (a)2vii through (a)2xii; in (a)2vii and (a)2viii, inserted "or qualified residential project"; in (a)2ix, substituted "If the capital investment is a qualified business facility, a" for "A"; in (a)3i, substituted "will be" for the first occurrence of "are" and "at the qualified business facility" for "as defined in this chapter"; in (a)3ii, substituted "at" for "that would occupy"; added new (a)3iii; and recodified former (a)3iii and (a)3iv as (a)3iv and (a)3v.

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Rewrote (a)2x; added new (a)3iv; and recodified former (a)3iv and (a)3v as (a)3v and (a)3vi.

19:31-9.6 Application and servicing fees

(a) A business applying for benefits under this program shall submit the following one-time non-refundable application fee, with payment in the form of a check, payable to the "New Jersey Economic Development Authority":

1. If a business is an owner of the proposed qualified business facility, the application fee is \$5,000;

2. If a business is a tenant of the proposed qualified business facility wherein the owner has not made application for the approval of tax credits, the application fee is \$5,000; or

3. If a business is a developer of the proposed qualified business facility, the application fee of \$5,000.

(b) In addition to the application fees in (a)1, 2 and 3 above, for a qualified business facility, a business shall pay to the Authority the full amount of direct costs of an analysis by a third party retained by the Authority, if the Authority deems such retention to be necessary.

(c) A non-refundable fee of .5 percent of the approved tax credit, not to exceed \$300,000, shall be charged by the Authority upon the approval of the tax credit.

(d) A non-refundable fee of .5 percent of the tax credit, not to exceed \$300,000, shall be paid prior to the receipt of the tax credit certificate.

(e) A business shall pay to the Authority an annual review fee, beginning the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital investment and employment qualifications, and for the duration of the eligibility period. The annual review fee shall be paid to the Authority by the business at the time the business submits its annual letter of compliance. The annual review fee shall be \$2,500 per year.

(f) A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-9.10 shall pay to the Authority a fee of \$2,500.

Amended by R.2010 d.177, effective August 16, 2010.
See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

In (a)2, inserted "wherein the owner has not made application for the approval of tax credits" and substituted "\$5,000" for "\$2,500"; added new (b); added (c), (d) and (f); recodified former (b) as (e); and rewrote (e).

Amended by R.2011 d.243, effective October 3, 2011.
See: 43 N.J.R. 1415(a), 43 N.J.R. 2622(a).

In (c) and (d), substituted "non-refundable" for "non-fundable".

19:31-9.7 Review of application and certification of project completion

(a) A business seeking an approval of tax credits for a qualified business facility may apply for tax credits for a qualified business facility that was commenced after January 13, 2008 within five years after January 13, 2008, the effective date of the Act. A residential developer may apply for tax credits for a qualified residential facility that was commenced after July 28, 2009 within five years after July 28, 2009, the effective date of P.L. 2009, c. 90 (that is, by July 28, 2014).

(b) The Authority shall conduct a review of the applications commencing with the application bearing the earliest submission date or if interest in the program so warrants, at its discretion and upon notice, institute a competitive application process whereby all applications submitted by a date certain will be evaluated as if submitted on that date. The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. The review will determine whether the applicant:

1. Complies with the eligibility criteria;

2. Satisfies the submission requirements; and

3. Adequately provides information for the subject application.

(c) In determining whether the company meets the net economic benefits test, as certified by the owner pursuant to N.J.A.C. 19:31-9.5(a)2iv and 3iv, the Authority's consideration shall include, but not be limited to, the local and State taxes paid directly by and generated indirectly by the business, property taxes or payment in lieu of taxes paid directly by and generated indirectly by the business, taxes paid directly or generated indirectly by new or retained employees, and peripheral economic growth caused by the business's relocation to the urban transit hub, provided that such determination shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority.

(d) In developing a recommendation for allocating credits to qualified residential projects, the chief executive officer shall take into account, together with other factors deemed relevant by the Executive Director:

1. An evaluation of the residential developer's pro forma analysis submitted pursuant to N.J.A.C. 19:31-9.5(a)2v;

2. Input from the municipality in which the project is located;

3. Whether the project furthers specific State or municipal planning and development objectives, or both; and

4. Whether the project furthers a public purpose, such as catalyzing urban development or maximizing the value of vacant, dilapidated, outmoded, government-owned, or underutilized property or both.

(e) Upon completion of the review of an application pursuant to (b) through (d) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application, the maximum amount of tax credits to be granted and, in the case of a residential developer, the maximum percentage amount of allowed tax credits for its capital investment in a qualified residential project, and promptly notify the applicant and the Director of the Division of Taxation of the determination. When considering an application involving intra-State transfers pursuant to N.J.A.C. 19:31-9.3(g), the Board shall make a separate determination to verify and confirm that the jobs are at risk of leaving the State, which will consist of reviewing the materials submitted by the applicant, testing the validity of financial information and assumptions through the use of computer models and, to the extent necessary, seeking input from third party consultants, the cost of which will be paid by the applicant. The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits. An approval letter setting forth the conditions subsequent will be sent to the applicant. Such conditions shall include, but not be limited to, the requirement

that the project complies with the Authority's prevailing wage requirements P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and affirmative action requirements P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), that the project does not violate any environmental law requirements, and requirements regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

1. If the application is approved, the project approval is subject to the terms and conditions of the approval letter, and any benefits under the program are subject to the completion of the project and satisfaction of the capital investment and employment qualifications required for the urban transit hub tax credits.

2. In the approval notice to the business, the Authority shall set a date by which its approval will expire.

(f) Within one year following the date of application approval by the Authority, each approved business shall submit progress information indicating that the business has site plan approval, financing for and site control of the qualified business facility or qualified residential project. Unless otherwise determined by the Authority in its sole discretion, the Authority's approval of the tax credits shall expire if the progress information is not received by the Authority within one year of the date of application approval.

(g) Upon completion of the capital investment and employment requirements of the program, the business shall submit a certification of a certified public accountant which may be made pursuant to an "agreed upon procedures" letter acceptable to the Authority evidencing that the business has satisfied the conditions relating to capital investment and any employment requirements.

1. The certification with respect to the capital investment shall define the amount of the tax credits and shall not be increased regardless of additional capital investment in the qualified business facility, provided however that in no event will the amount of tax credits exceed the amount of tax credits previously approved by the Board or, in the case of a residential developer, the maximum percentage amount of allowed tax credits approved by the Board for the business's capital investment in a qualified residential project. If the certification indicates that the capital investment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

2. In general, this certification shall be submitted to the Authority no later than five years after the Authority's receipt of the progress information.

3. For project applications for a qualified business facility approved in the fifth year that the Act is in effect, the certification shall be submitted no later than eight years after the effective date of the Act (that is, by January 13, 2016). For developer applications approved in the fifth year that the Act is in effect, any tenant's application and

certification relating to a qualified business facility so approved shall be submitted no later than eight years after the effective date of the Act (that is, by January 13, 2016). For residential developers approved in the fifth year that P.L. 2009, c. 90 is in effect, any certification relating to a qualified residential project so approved shall be submitted no later than eight years after the effective date of the Act (that is, by July 28, 2017).

4. The Authority may seek additional information from the business and or information from the Department of Labor and Workforce Development to support the certification.

(h) Once the Authority accepts the certification of the business that it has satisfied the capital investment and employment requirements, if any, of the program, and the Authority determines that other necessary conditions have been met, the Authority shall notify the business and notify the Director of the Division of Taxation, and the business shall receive its tax credit certificate. The use of the tax credit certificate shall be subject to the receipt of an annual letter of compliance.

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Rewrote (a) and the introductory paragraph of (b); added new (c) and (d); recodified former (c) as new (e) and former (d) as (g); rewrote (e) and (g); added (f); recodified former (e) as (h); and rewrote (h).

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In (e)1, substituted "approval letter" for "project agreement".

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

In (c), inserted "and 3iv"; and in the introductory paragraph of (e), inserted the second sentence.

19:31-9.8 Tax credit certificate

(a) The tax credit certificate shall set forth the following terms:

1. The starting date of the eligibility period;
2. The amount of the tax credits;
3. A requirement that any use of the tax certificate be accompanied by a letter of compliance;
4. In the event that the Board has approved an application for a business using one or more affiliates in order to satisfy the employment and or capital investment requirements of the program, a schedule setting forth the eligible affiliates and a requirement by the business to notify the Authority at least seven days prior to date of filing relating to each tax accounting or privilege period the proposed allocation of tax credits by the business;
5. Events that would trigger reduction and forfeiture of tax credit amounts;
6. Reporting requirements and an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200.

Amended by R.2010 d.177, effective August 16, 2010.
See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).
Section was "Project agreement". Rewrote the section.

19:31-9.9 Tax credit amount; application and allocation of the tax credit

(a) The amount of tax credit allowed shall be equal to the capital investment made by the business or the capital investment represented by the business' leased area, or area owned by the business as a condominium, subject to any reduction or disqualification provided in the Act and this subchapter and, provided that in no event will the amount of tax credits exceed the amount of tax credits previously approved by Board or, in the case of a residential developer, the maximum percentage amount of allowed tax credits approved by the Board for the business's capital investment in a qualified residential project as follows:

1. If the owner uses space in a qualified business facility, in order to determine the amount of the owner's capital investment that will be attributed toward the amount of its tax credit, the Authority shall multiply the owner's capital investment by a fraction, the numerator of which is the net leaseable area of the qualified business facility not leased to tenants and the denominator of which is the total net leaseable area. For purposes of this calculation, unless the business that owns or operates the residential space qualifies under N.J.A.C. 19:31-9.3, residential space leased or offered for lease or sale shall not be included in the numerator.

2. In order to determine the amount of the tenant's or condominium's capital investment that will be attributed toward the amount of its tax credits, the Authority shall add the amount of capital investment that results from the calculation in N.J.A.C. 19:31-9.3(b) to any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant, provided that the owner has not included such tenant allowance or tenant improvements in its calculation of capital investment and further provided that such tenant allowance or tenant improvements meet the definition of capital investment.

(b) For the 10 consecutive years following the notification pursuant to N.J.A.C. 19:31-9.7(h), a business may apply 10 percent of the total credit amount per each tax accounting or privilege period, subject to the provisions of the Act and this subchapter.

(c) The business may apply the credit against their corporation business tax or insurance premiums tax otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. The credit awarded to the business using one or more affiliates to satisfy the employment and or capital investment requirements of the program shall be applied on the basis of the allocation(s) submitted pursuant to the application, or as

subsequently adjusted pursuant to N.J.A.C. 19:31-9.14 provided, however, that any affiliate that receives an allocation must have contributed either capital investments to the business facility or employees at the business facility during the tax period for which the tax credits are issued.

(d) The amount of credit allowed for a tax period to a business that is a tenant in a qualified business facility shall not exceed the business' total lease payments for occupancy for the tax period.

(e) The tax credits are not refundable and shall not result in a refund in the event that they do not equal or exceed a business's tax liability.

(f) The credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter, provided that the business does not take more than one-tenth of its approved credit amount in any tax period and the value of all credits approved by the Authority against tax liabilities pursuant to P.L. 2007, c. 346 (N.J.S.A. 34:1B-207 et seq.), in any fiscal year, shall not exceed \$150,000,000.

(g) Credits unused at the conclusion of 10 years beginning with the tax period in which the Authority accepts the certification that the business has satisfied its investment capital and employment qualifications shall be void.

Amended by R.2010 d.177, effective August 16, 2010.
See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Rewrote the introductory paragraph of (a); in (a)2, inserted "or condominium's"; rewrote (b); deleted former (c); recodified former (d) through (h) as (e) through (g); and rewrote (e).

Amended by R.2012 d.044, effective February 21, 2012.
See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Rewrote (f).

19:31-9.10 Application for tax credit transfer certificate

(a) Tax credits, upon receipt thereof by a business from the Director and the Authority, may be transferred, by sale or assignment, in full or in part, pursuant to this section, to any other person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. A business may apply to the Director of the Division of Taxation in the Department of Treasury and the Chief Executive Officer of the Authority for an initial tax credit transfer covering one or more tax periods, in lieu of the business being allowed any amount of the credit against the tax liability of the business. Such application shall identify the specific tax credits to be transferred (amounts, tax periods), the consideration received therefor, and the identity of the transferee. The total amount transferred for any single tax period shall be at least \$1 million in tax credits. Once approved by the Chief Executive Officer of the Authority and

the Director of the Division of Taxation, a tax credit transfer certificate shall be issued to the business, naming the transferee. The certificate issued to the business shall include a statement waiving the business' right to claim that amount of the credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credits by the business that originally applied for and was allowed the credits.

(b) The initial sale or assignment of any amount of a tax credits allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount. In order to evidence this requirement, the business shall submit to the Authority an executed form of standard selling agreement which states that the consideration received by the business is not less than 75 percent of the transferred credit amount.

(c) In the event that the business is a partnership and chooses to allocate the income realized from the sale of the tax credits other than in proportion to the partners' distributive shares of income or gain of the partnership, the selling agreement shall set forth the allocation among the partners which has previously been submitted to the Director of the Division of Taxation in the Department of Treasury pursuant to N.J.A.C. 19:31-9.5(a).

(d) Following an initial transfer of tax credits by a business that originally applied for and was allowed the credits, transferees and subsequent transferees of such credits may also make subsequent transfers to person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. A transferee may, upon notice to the Director of the Division of Taxation in the Department of Treasury and the Authority, effectuate a subsequent tax credit transfer, in the same amount and for the same tax periods set forth in such transferee's tax credit transfer certificate, in lieu of the transferee being allowed any amount of the credits against the tax liability of the transferee. Such subsequent transfer shall occur by means of endorsement of the tax credit transfer certificate to the subsequent transferee. The provisions of (b) and (c) above shall not apply to such subsequent transfers.

(e) The Authority shall develop and make available forms of applications and certificates to implement the transfer processes described in this section.

New Rule, R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Former N.J.A.C. 19:31-9.10, Reduction and forfeiture of tax credits, recodified to N.J.A.C. 19:31-9.12.

Repeal and New Rule, R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Section was "Application for tax credit transfer certificate".

19:31-9.11 Cap on total credits

The value of all credits approved by the Authority shall not exceed \$1,500,000,000 of which the Authority may approve up to \$150,000,000 in credits in the aggregate for residential developers making capital investments in qualified residential projects, provided that for each qualified residential facility, the residential developer shall be allowed tax credits of no more than 35 percent of its capital investment. Based on application and allocation activity and if sufficient credits are available, the Authority may direct that the \$150,000,000 cap be exceeded for allocation to qualified residential projects, as is deemed reasonable, justified and appropriate.

New Rule, R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Former N.J.A.C. 19:31-9.11, Reporting requirements, recodified to N.J.A.C. 19:31-9.14.

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Substituted "35" for "20".

19:31-9.12 Reduction and forfeiture of tax credits

(a) Unless excepted pursuant to (a)2 below, the amount of the annual credit otherwise available shall be reduced by 20 percent for that tax period if:

1. Fewer than 200 full-time employees at the qualified business facility or, if the applicant is a tenant and has qualified under N.J.A.C. 19:31-9.3(a)2iii, fewer than 200 full-time employees in the aggregate are employed in new full-time positions in any tax period.

i. This reduction will remain for each subsequent tax period until the first period for which documentation demonstrating the restoration of the 200 full-time employees employed in new full-time positions at the qualified business facility has been reviewed and approved by the Authority.

ii. Once documentation restoring the 200 full-time employees employed in new full-time positions has been approved, for the current tax period and each subsequent tax period the full amount of the annual credit shall be allowed.

2. For businesses applying before January 1, 2010, there shall be no reduction if a business relocates to an urban transit hub from another location or locations in the same municipality.

(b) If, in any tax period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax accounting or privilege period prior to the credit amount approval under N.J.A.C. 19:31-9.7(e), then the business shall forfeit its credit amount for that tax period and each subsequent tax period until the first tax period for which documentation demonstrating the restoration of the business's Statewide workforce to the threshold levels required by this subsection has been

reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed. For purposes of this section, "business" shall include any affiliate that has contributed to the capital investment, received the tax credit or contributed to the 250 full-time employees at the qualified business facility.

(c) If, in any tax period, the number of full-time employees employed by the business at the qualified business facility drops below 250 or the number of full-time employees, who are not the subject of intra-State job transfers, pursuant to N.J.A.C. 19:31-9.3(g)1, employed by the business at any other business facility in the State, whether or not located in an urban transit hub within an eligible municipality, drops by more than 20 percent from the number of full-time employees in its workforce in the last tax accounting or privilege period prior to the credit amount approval under N.J.A.C. 19:31-9.7(e), then the business shall forfeit its annual credit amount for that tax period and each subsequent tax period, until the first tax period of which documentation demonstrating the restoration of the number of full-time employees employed by the business at the qualified business facility to 250 or an increase above the 20 percent reduction has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed.

(d) If in any year in which the residential components of the qualified residential project no longer constitutes the preponderance thereof as it existed at the time of certification of the tax credit amount, the residential developer or his assignee shall forfeit its annual credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating that the qualified residential project consists of the preponderance of residential units as existed at the time of certification of the tax credit amount has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed. Additions of commercial space to the project shall not be considered in this determination.

Recodified from N.J.A.C. 19:31-9.10 and amended by R.2010 d.177, effective August 16, 2010.
See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

In the introductory paragraph of (a), substituted "available" for "determined pursuant to final calculation of the award of tax credits"; rewrote the introductory paragraph of (a)1, and (b) and (d); and in (a)2, substituted "For businesses applying before January 1, 2010, there" for "There". Former N.J.A.C. 19:31-9.12, Events of default, repealed.
Amended by R.2012 d.044, effective February 21, 2012.
See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

In (b), substituted "N.J.A.C. 19:31-9.7(e)" for "this section"; and rewrote (c) and (d).

19:31-9.13 Effect of sale or lease of qualified facilities

(a) The tax credit amount shall be forfeited in the event of sale of the qualified business facility or sublease of the business's tenancy as follows:

1. If the qualified business facility is sold in whole or in part during the 10-year eligibility period, the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, except that any credits of tenants shall remain unaffected. The new owner may not apply for tax credits based upon the seller's capital investment. If the business merges with or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner.

2. If a tenant subleases its tenancy in whole or in part during the 10-year eligibility period, the sublessee shall not acquire the credit of the sublessor, and the sublessor tenant shall forfeit all credits for the tax period of its sublease and all subsequent tax periods, except that if the sublessor tenant retains sufficient capital investment and employment to remain eligible for the program, the forfeiture shall affect only the credits attributable to the subleased portion of the facility. For the purposes of calculating the total annual lease payments of the business, the lease payments of the sublessee shall be subtracted.

(b) In the event of sale of the qualified residential facility in whole or in part, the seller may either retain the tax credit amount or assign to the new owner a tax credit amount equal to the amount of the capital investment that is sold, provided that the capital investment sold represents at least \$17,500,000 of the capital investment in the facility. In order to determine the amount of capital investment sold, the Authority shall multiply the owner's capital investment by the fraction, the numerator of which is the square footage of the portion of the qualified residential facility that is sold and the denominator of which is the total square footage of the qualified residential facility.

(c) Tenants in a qualified residential project are not eligible to apply for tax credits and an owner may not assign tax credits to a tenant.

Repeal and New Rule, R.2010 d.177, effective August 16, 2010.
See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).
Section was "Remedies".

19:31-9.14 Reporting requirements; letter of compliance

(a) After notification pursuant to N.J.A.C. 19:31-9.7(h):

1. In the case of a qualified business facility, the business shall furnish to the Authority an annual report certified by a certified public accountant in a format as may be determined by the Authority which shall contain the following information:

i. The number of full-time employees and new full-time positions employed at the qualified business facility, the number pertaining to the business's Statewide employment, total lease payments and information on any change or anticipated change in the identity of the entities comprising the business elected to claim all or a portion of the credit. This certified report is due 120

days after the end of the business's tax privilege period; and, failure to submit the certified report within 120 days will result in forfeiture of the tax credit for that privilege period; and

ii. A certification indicating whether or not the business is aware of any condition, event, or act which would cause the business not to be in compliance with the approval, the Act or this subchapter; and

2. In the case of a qualified residential project, either the owner of the project or a tax credit transferee shall furnish to the Authority a report in a format as may be determined by the Authority which shall contain the following information:

i. Documentary evidence that a deed restriction has been recorded against each residential component of the qualified residential project. The deed restriction shall require that all residential units remain residential units until the eligibility period has expired; and

ii. Evidence that the residential units of the qualified residential project are not being used for non-residential purposes. Such evidence may include, but is not restricted to, rental receipts, municipal records, and/or a certification by a MAI appraiser or governmental official. Failure to submit a copy of the annual report or submission of the annual report, without the information required above, will result in forfeiture of any annual tax credits to be received by the business or tax credit holder unless the Authority determines that there are extenuating circumstances excusing the business or tax credit transferee from the timely filing required. The Authority reserves the right to audit any of the representations made and documents submitted in the annual report.

(b) The tax credit certificate may provide for additional reporting requirements.

(c) Annually, upon satisfactory review of all information submitted, the Authority will issue a letter of compliance. No tax credit certificate will be valid without the letter of compliance issued for the relevant tax privilege period. The letter of compliance will indicate whether the business or the tax credit holder may take all or a portion of the credits allocable to the tax privilege period.

Recodified from N.J.A.C. 19:31-9.11 and amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Section was "Reporting requirements". Rewrote the introductory paragraph of (a) and (a)2; in (c), substituted "tax credit certificate" for "project agreement"; added new (d); and recodified former (d) as (e). Former N.J.A.C. 19:31-9.14, Appeals, recodified to N.J.A.C. 19:31-9.15. Repeal and New Rule, R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Section was "Reporting requirements; letter of compliance".

19:31-9.15 Appeals

(a) The procedure for an appeal of the Authority's action on an application to the program shall be as follows. An applicant may appeal the Authority's action on an application to the program by submitting in writing to the Authority, within 30 days from the date of the Authority's action, an explanation as to how the applicant has met the program criteria and may also request an informal hearing. In the event the application is reconsidered as eligible for the program, such application shall be presented for action to the Board.

(b) In the event of an adverse decision after an informal hearing under (a) above, or if a business determines not to seek an informal hearing, and providing further, that the dispute or controversy is a contested case, as defined in N.J.S.A. 52:14B-2(b), a business may request, within 45 days of the written decision resulting from the informal hearing or the determination of the Authority if any informal hearing is not sought, a formal hearing.

(c) Upon filing of the initial pleading in a contested case, the Authority may either retain the matter for hearing directly or transmit the matter for hearing before the Office of Administrative Law. Such hearings shall be governed by the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) Every determination of a dispute or controversy arising from this subchapter by the Authority, constituting final agency action by the Authority, shall be embodied in a written decision, which shall set forth findings of fact and conclusions of law pursuant to the applicable rules of the Office of Administrative Law.

Recodified from N.J.A.C. 19:31-9.14 by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Former N.J.A.C. 19:31-9.15, Severability, recodified to N.J.A.C. 19:31-9.16.

19:31-9.16 Severability

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

Recodified from N.J.A.C. 19:31-9.15 by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

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.

“Consumer Price Index” means the consumer price index developed by the United States Bureau of Labor Statistics for

Urban Wage Earners and Clerical Workers using the Metropolitan Statistical Area (MSA) by county as developed by the United States Census Bureau in its most recent census. The MSA by county for New Jersey divides the State into northern and southern areas. If the project is located in an area designated as a northern county, the northern index shall be used and if the project location is in an area designated as a southern county, the southern index shall be used.

“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.

“Effective date” means the date of approval of the grant by the Authority’s governing board.

“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. "New employee" shall also not include 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 business receiving a grant 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 employee who was employed by a business entity or entities merging, combining or consolidating with the business receiving a grant who would have not qualified as a new employee if the merging, combining or consolidating business entity had applied for a grant.

"New employment commitment" shall mean the number of new employees projected at the time of application or if this projected number has not been reached by the end of the base years, the number of 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. New employment commitment shall also have the meanings set forth in N.J.A.C. 19:31-10.5(c) and (d).

"Non-resident New Jersey employee" means a new employee who lives outside New Jersey and who is not subject to any withholding tax under the laws of the State of New Jersey, such that the withholding for such employee must be computed pursuant to N.J.A.C. 18:35-7.8 as the hypothetical amount of withholding that would occur if the employee were to move to New Jersey.

"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 where-in 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”.

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Rewrote “New employee” definition.

Amended by R.2008 d.18, effective January 7, 2008.

See: 38 N.J.R. 5341(a), 40 N.J.R. 195(b).

Added definitions “Consumer Price Index”, “Effective date” and “Non-resident New Jersey employee”; and rewrote definition “New employment commitment”.

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 por-

tion 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 per new employee for all new employees over the term of the grant. The average for all new employees over the term of the grant shall be determined based on annual reports submitted by the applicant, certifying the number of new employees.

1. The Authority will review the certified reports annually to determine whether the applicant has reached or exceeded the \$50,000 per new employee limit. To the extent that the applicant has received grant funds in excess of \$50,000 per new employee, the Authority will reduce the grant proportionally.

EXAMPLE: Company A receives a grant in the aggregate amount of \$1,500,000 for calendar years 1 through 5. The Company certifies that it has 2,000 full-time new employees as of December 31 of Year 5. In Year 6, Company A reduces its workforce, such that it has only 25 full-time new employees as of December 31 of that year. Subsequently, in

Year 7, Company A hires new employees and certifies that, as of December 31 of Year 7, it has 1,000 employees.

Based on these facts, in Year 5 of the grant term, the Authority concludes that Company A's aggregate grant amount does not exceed the \$50,000 per new employee limitation, because the aggregate annual amount for each new employee equals \$750.00 ($\$1,500,000/2,000 = \750.00). However, in Year 6 of the term, the Authority concludes that the company is not eligible for the grant, because the company's per new employee average exceeds the maximum \$50,000 in that year ($\$1,500,000/25 = \$60,000$). In Year 7, the Authority concludes that Company A is again eligible for a grant, because the per employee amount does not exceed \$50,000 ($\$1,500,000/1,000 = \$1,500$).

The failure of Company A to qualify for a grant in Year 6 will not extend 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 Re-development 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 10 percent of the employees of the business receive a "qualified transportation fringe" in a minimum amount of \$30.00 pursuant to Title 26 of the United States Internal Revenue Code Section 132(f)(1)(a) for transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment or Section 132(f)(1)(b) for any transit pass, as such commuter highway vehicle and transit pass are defined in Section 132(f) of the Internal Revenue Code;

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;

19. Whether the business is within a designated industry and is located within a New Jersey Economic Development Authority Innovation Zone; and

20. 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 employ-

ees 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 which shall be a 20 percent cap 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.

3. The business shall be awarded a grant percentage at the time of approval based on the criteria set forth in this section. On an annual basis, when determining the amount of the grant to be awarded to the business for each calendar year, the Authority shall review the annual reports submitted by the business pursuant to N.J.A.C. 19:34-10.6. If the business has not met the new employment commitment, but has achieved the minimum eligibility threshold or the business has exceeded the new employment commitment, the amount of the grant shall be based on the actual amount of eligible positions created and Authority shall adjust the awarded grant percentage for the applicable calendar year pursuant to the criteria set forth in this section and subject to N.J.A.C. 19:31-10.4(e)2.

(f) A business that is receiving any other grant by operation of State law is limited to a Business Employment Incentive Grant which annual value when combined with the other grants cannot exceed 80 percent of the business's withhold-

ings or 50 percent of the estimated tax of partners of an eligible partnership, except upon the written approval of the State Treasurer. Amounts received as grants from the Office of Customized Training pursuant to N.J.S.A. 34:15D-1 et seq. shall be excluded from the calculation.

(g) A business that qualifies under N.J.S.A. 34:1B-129b for a grant of up to 80 percent of its withholdings or up to 50 percent of its estimated tax that is receiving any other grant by operation of State law is limited to a Business Employment Incentive Grant which annual value when combined with the other grants cannot exceed 80 percent of the business's withholdings or 50 percent of the estimated tax of partners of an eligible partnership; except upon the written approval of the State Treasurer. Amounts received as grants from the Office of Customized Training pursuant to N.J.S.A. 34:15D-1 et seq. shall be excluded from the calculation.

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

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

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

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

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

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

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

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); added new (b); recodified (b) through (f) as (c) through (g); deleted former (g); and amended new (c), (d), (e) and (f).

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

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

In (e), rewrote 2, added 3.

Amended by R.2008 d.18, effective January 7, 2008.

See: 38 N.J.R. 5341(a), 40 N.J.R. 195(b).

Rewrote (a) and (c)15; in (c)18, deleted "and" from the end; added new (c)19; recodified former (c)19 as (c)20; in (e)2, substituted "which shall be a 20 percent cap" for "equal to up to 20 percent"; in (f), inserted "annual"; added new (g); and recodified former (g) as (h).

19:31-10.5 Business expansion or relocation

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

1. Upon Authority Board approval, the business's payroll/number of employees shall be registered, including the number of existing employees in New Jersey. Upon occupancy of the project, the business shall have until the end of the base years to achieve the number of employees as

represented at application. Only those new employees in eligible positions shall be considered when determining a grant.

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

3. Grant payments shall be issued by the Authority subject to annual appropriation from the General Fund to the Authority or upon 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 in the amount of the grant.

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

(c) If a business is expanding through a merger or consolidation with one or more companies, only the eligible positions created or transferred from outside New Jersey after board approval and the official date of the merger or consolidation shall be considered when determining a grant. The Authority's approval of the merger or consolidation will be conditioned on the growth of the number of new employees under the grant being subject to N.J.A.C. 19:31-10.4(e)2.

(d) To the extent a business requests to add an additional site to an existing BEIP, the Authority's approval of the new site will be conditioned on the growth of the number of new employees under the grant being subject to N.J.A.C. 19:31-10.4(e)2. The additional site will be required to meet or to have met the material factor test, unless the additional site is directly related to growth at the original project site.

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

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

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

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

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

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

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).

In (a)3, inserted "or upon issuance of a bond, the proceeds of which are intended for grant payments" preceding "beginning the next calendar year".
Administrative correction.
See: 40 N.J.R. 809(a).

19:31-10.6 Grant conditions

(a) The business shall maintain the project, the required minimum number of eligible positions in New Jersey and at least 80 percent of the Base Employment Number for the commitment duration. Businesses which are tenants applying

individually to the program may be restricted by the term of their lease.

(b) The Authority shall apply any job creation above the new employment commitment at the project against any losses in the base employment number when determining whether a business has fallen below 80 percent of the base employment number.

(c) By March 1st of the year after the grant year in which the business commences the grant term, the business shall submit an annual payroll report containing one section for new employees in eligible positions whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq. and one section for all other new employees in eligible positions and indicating the following information for the business and the project for the grant year in which the business commenced the grant term:

1. The total amount of withholdings during the grant year for each new employee in an eligible position;
2. The eligible positions which were created during the preceding grant year;
3. The names of each new employee in an eligible position;
4. The date of hire of each new employee in an eligible position;
5. The actual salary of each new employee in an eligible position, or if the new employee is a partner of an eligible partnership, the amount of estimated taxes paid by the partner;
6. The amount of withholdings of each new employee in an eligible position;
7. The termination date, if applicable, of each new employee in an eligible position;
8. The social security numbers of each new employee in an eligible position;
9. A certification stating that no new employees are related persons of the owners of the business; and
10. A certification identifying the eligible positions that have been filled by persons who are rehired from a bona fide layoff or transferred from another company.

(d) The Authority shall be entitled to audit the payroll records of the business, to require the business to submit detailed payroll reports and to make adjustments as necessary to the amount of any future grant payment at any time during the term of the grant as the Authority deems necessary.

(e) If the business receiving a grant should generate significant new employment beyond the base years that was not originally anticipated at application, the Authority may amend the agreement to increase the annual grant percentage

or term amount to reflect said increased employment subject to N.J.A.C. 19:31-10.4(e)2.

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

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

(h) As a condition for its continuation in the grant program, no later than March 1 of the year following the first grant year, every business which is awarded a grant from the Business Employment Incentive Program shall submit to the Authority a detailed payroll report indicating all employment positions of the business and the employees who filled those positions located in New Jersey that ceased to exist or to be located in New Jersey within six months after the date of the application.

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

1. A copy of its applicable New Jersey and Federal tax returns showing business income and withholdings and a copy of the New Jersey partnership return for eligible partnerships including Schedule NJK-1, within 30 days of filing;

2. A certification form containing one section for new employees in eligible positions whose income is not subject to New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq. and one section for all other new employees in eligible positions and indicating:
 - i. The total amount of withholdings for new employees in eligible positions for the grant year;
 - ii. The total amount of new employees in eligible positions for the grant year;
 - iii. The total amount of new employees in eligible positions who were terminated in the grant year;
 - iv. A statement that no new employees are related persons of the owners of the business;
 - v. A copy of the NJ-W-3, annual reconciliation of tax withheld for the grant year; and
 - vi. With respect to all non-resident New Jersey employees, on a form provided by the Authority, a list of all such employees, with a computation of the hypothetical withholding tax in the amount that would be attributable to each such employee, calculated pursuant to the New Jersey Gross Income Tax Act,

N.J.S.A. 54A:1-1 et seq. as if the non-resident New Jersey employees are subject to New Jersey gross income tax. The computation of withholding under this subparagraph shall be based on income as reported on each non-resident employee's Federal Form W-2, Wage and Tax Statement and in accordance with the instructions and methods prescribed by the current employer instruction booklet (Form NJ-WT). The approved method for computing withholdings for single employees shall be pursuant to the Taxation Division Director's table, in effect at the time of calculation, for Percentage Method of Withholding, "Rate A," weekly payroll period. The approved method for computing withholdings for married persons or heads of household shall be pursuant to the Taxation Division Director's table, in effect at the time of calculation, for Percentage Method of Withholding, "Rate B," weekly payroll period. Each applicant business must submit copies of the Federal Form W-2 with the list required by this subsection for each non-resident New Jersey employee identified on the list;

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

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

5. A copy of the business's W-3 form for the reporting year; and

6. For each new employee in an eligible position whose income is not subject to New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq., a copy of the W-2 form.

(j) Should any business which is awarded a grant under the Act fail to submit to the Authority a copy of its annual certification or submit its annual certification without the information required by the time periods specified in (g) and (g)1 above, any grant payment to be received by any such business shall be forfeited for the applicable reporting year unless the Chief Executive Officer of the Authority determines that there are extenuating circumstances excusing the timely filing required herein. For purposes of this subsection (h), "extenuating circumstances" means the destruction of the business's payroll records due to a fire, earthquake, flood, acts of terrorism, infestation, or the complete loss of the business's computer records.

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

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

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

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 (a) and (b); in (e), added the N.J.A.C. reference.

Amended by R.2008 d.18, effective January 7, 2008.

See: 38 N.J.R. 5341(a), 40 N.J.R. 195(b).

In the introductory paragraph of (i), inserted " , on a form provided by the Authority"; in (i)2iii, deleted "and" from the end; and added (i)2v and (i)2vi.

19:31-10.7 Application procedures

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

1. The name and address of the business;
2. A history and description of the applicant's business;
3. A detailed description of the proposed project, including the location and type of activity which the business will be engaged in at the project site;
4. A detailed breakdown of the total project cost indicating sources and uses of any financial assistance for the project;
5. A complete schedule of all officers, directors and stockholders owning 15 percent or more of the stock;
6. Annual financial statements for the two most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;
7. A current interim statement, if the most recent annual financial statement is more than six months old;
8. The estimate of eligible positions to be created during the base years and thereafter;
9. An estimate of total withholdings to be generated from these new positions;
10. A certification stating the amount, date received and provider of any grant received under State law, including the Business Relocation Assistance Grant;
11. If the business is awaiting a grant award notification for any grant offered under State law, the business shall submit a certification identifying the grant provider and the anticipated amount and date of award;
12. Whether the business is located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan;
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 10 percent of the employees of the business receive a "qualified transportation fringe" in a minimum amount of \$30.00 pursuant to Title 26 of the United States

Internal Revenue Code Section 132(f)(1)(a) for transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment or Section 132(f)(1)(b) for any transit pass, as such commuter highway vehicle and transit pass are defined in Section 132(f) of the Internal Revenue Code;

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 nonprofit university on research and development;

19. Whether 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; and

20. For publicly traded businesses, a copy of the businesses' form 10K; and

21. Any additional information deemed necessary to evaluate a specific application including, but not limited to, the certified annual statement required by N.J.A.C. 19:31-10.4(a), and the type and form of records required to be submitted to the Director pursuant to N.J.A.C. 18:35-7.1 through 7.8, as amended from time to time by the Director pursuant to N.J.S.A. 34:1B-137.

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

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

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

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

(c) A business shall submit on a form prescribed by the Authority a detailed payroll report indicating all employment positions of the business and the employees who filled those positions located in New Jersey that ceased to exist or to be located in New Jersey within three months of the date of the application.

(d) If the applicant meets all of the program criteria set forth in the rules, the grant shall be recommended for consideration and official actions by the members of the Authority at a public meeting. The applicant has no right to have its application presented to the members of the Authority for consideration.

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

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

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).

In (a), inserted new 12 through 19 and recodified existing 12 as 20; rewrote (b); inserted new (c); recodified and amended existing (c) as (d).
Amended by R.2005 d.97, effective March 21, 2005.

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

In (a), added a new 20 and recodified existing 20 as 21.

Amended by R.2008 d.18, effective January 7, 2008.

See: 38 N.J.R. 5341(a), 40 N.J.R. 195(b).

Rewrote (a)15 and (a)21; and in (a)20, substituted "and" for a period at the end.

19:31-10.8 Evaluation process

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

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

19:31-10.9 Approval process

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

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

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

(d) If there has been no veto, a Commitment Letter shall be issued to the applicant, which contains all terms and conditions of the grant. The business must execute and return the Commitment Letter within 30 days. Failure to execute and return the Commitment Letter to the Authority within 30 days

will result in rescission of the grant. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of a Commitment Letter upon request by the business.

(e) When all required documentation as outlined in the Commitment Letter is submitted by the business, in form and content satisfactory to the Authority, a Grant Agreement shall be prepared by the Authority and forwarded to the business for execution.

(f) If the business does not execute and return the Grant Agreement within 60 days from the date of issuance, the grant shall be rescinded.

(g) If the business does not commence the project within one year from the date of approval by the Members of the Authority, the grant shall be rescinded. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of the grant upon request by the business.

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 (d) and (e); inserted new (f) and (g).

19:31-10.10 Rescission and withholding of grant payments

(a) Defaults under the grant agreement may include, but not be limited to:

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

(b) Upon a default under the grant agreement, in addition to any other remedies in the grant agreement and available under this section and under the Act, the Authority may withhold any payment not yet paid at the time of the default under the grant agreement. The Authority shall provide written notice to the business of its intent to withhold, reduce or terminate the grant. The business may request in writing reconsideration of the Authority's decision. The determination to withhold, reduce or terminate a grant is solely within the Authority's discretion.

(c) Upon failure to maintain the minimum eligibility threshold or 80 percent of the base employment number, the Authority may suspend the grant agreement for a period of two years, provided the company can demonstrate during that period a continued effort and commitment to growth in New

Jersey. An additional one year of suspension may be granted upon application to the Authority. Any suspension shall not extend the term of the grant.

(d) Upon termination of the grant agreement, in addition to any other remedies in the grant agreement and available under this section and under the Act, the Authority may require repayment of an amount of the grant based on the period of time the business complied with the grant, provided, however, that the Authority may require repayment of the total amount paid to the business over the term of the grant if the default results from the business moving the project out of the State of New Jersey or the business being sold and moved out of the State of New Jersey.

(e) Refunds shall be made payable to the State of New Jersey with notice to the Authority for deposit in the Property Tax Relief Fund and mailed to the:

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

Amended by R.2005 d.97, effective March 21, 2005.
See: 36 N.J.R. 5663(a), 37 N.J.R. 904(b).
Rewrote the section.

19:31-10.11 Prevailing wage and affirmative action

The business shall comply with the Authority's prevailing wage requirements, N.J.A.C. 19:30-4, and affirmative action requirements, N.J.A.C. 19:30-3, in the performance of the construction contract for the project, provided that prevailing wage shall not be required for construction commencing more than two years after an entity has executed with the Authority a commitment letter and the first payment or other provisions of assistance is received.

Repeal and New Rule, R.2008 d.18, effective January 7, 2008.
See: 38 N.J.R. 5341(a), 40 N.J.R. 195(b).
Section was "Prevailing wage".
Amended by R.2010 d.285, effective December 6, 2010.
See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).
Rewrote the section.

19:31-10.12 Fees

(a) A non-refundable application fee of \$1,000 shall accompany every application for grant assistance.

(b) A non-refundable commitment fee of \$1,000 is charged with the acceptance by an applicant for a BEIP grant.

(c) A non-refundable Commitment Letter extension fee of \$1,000 shall be paid for every extension of a Commitment Letter expiration date beyond the initial expiration date.

(d) A non-refundable fee of \$1,000 shall be paid at closing.

(e) A non-refundable fee of \$750.00 shall be paid for each request for any administrative changes, additions or modifications to the grant; and a non-refundable fee of \$1,500 shall be

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".
Recodified from N.J.A.C. 19:31-11.8 and amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (a), inserted "; unless the authority to approve certain types of transactions has been expressly delegated by the members to Authority staff"; in the introductory paragraph of (d), inserted "or if Authority staff has rendered its approval under delegated authority,"; and in (g), inserted ", subject to any preconditions to disbursement imposed thereon by the Authority". Former N.J.A.C. 19:31-11.10, Attorney General review, recodified to N.J.A.C. 19:31-11.12.

19:31-11.11 Disbursement of financial assistance

(a) All requests for disbursements of the financial assistance shall be submitted by the applicant to the Department 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. The Authority will disburse funds only upon written approval by the Department. Notwithstanding the foregoing, the Authority will disburse funds for closure or closure and replacement of a non-leaking tank upon satisfactory review and approval of a completed application and imposition of a statutory lien, if applicable.

(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.

(e) If a combination loan and grant is awarded, the Authority shall release the loan monies prior to the release of the grant monies, and only release the grant monies upon closure and complete disbursement of the loan.

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".
Recodified from N.J.A.C. 19:31-11.9 and amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (a), inserted "to the Department" and inserted the last two sentences; and added (e). Former N.J.A.C. 19:31-11.11, Fees, recodified to N.J.A.C. 19:31-11.13.

19:31-11.12 Attorney General review

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

Recodified from N.J.A.C. 19:31-11.10 by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Former N.J.A.C. 19:31-11.12, Public record, recodified to N.J.A.C. 19:31-11.14.

19:31-11.13 Fees

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

1. \$250.00 for tanks in residential buildings;
2. \$500.00, at application, for tanks in nonresidential buildings; \$500.00 or one-half of one percent of the financial assistance, whichever is greater, upon the acceptance of financial assistance under the Fund; and \$500.00 or one-half of one percent of the financial assistance, whichever is greater, at closing; and
3. \$1,000 for seven or more tanks in nonresidential buildings.

(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.

Recodified from N.J.A.C. 19:31-11.11 and amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (a)1 and (a)3, inserted "tanks in" and substituted "buildings" for "tanks per facility"; and rewrote (a)2.

19:31-11.14 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.

Recodified from N.J.A.C. 19:31-11.12 by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

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, as amended by P.L. 2009, c. 90 and P.L. 2010, c. 10. This Act establishes a corporation business tax benefit certificate transfer program to assist new or expanding emerging technology and biotechnology companies in New Jersey.

Amended by R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

Substituted "c. 334, as amended by P.L. 2009, c. 90 and P.L. 2010, c. 10" for "c.334".

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 business 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, and 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 corporation that has a headquarters or base of operations located in New Jersey that owns, has filed for, or has a license to use protected, proprietary intellectual property and whose primary business is 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.

"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.

"Camden innovation zone" means the innovation zone in the southern part of the State bounded as follows: in the north by the Ben Franklin Bridge, in the east by Interstate 676, in the south by Kaighns Avenue, and in the west by the Delaware River.

"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.

"Financial statements" means a statement prepared by an independent Certified Public Accountant (CPA), which shall include an opinion letter indicating the scope of the services performed (compilation, review, or audit) in accordance with Generally Accepted Accounting Principles (GAAP) as determined by the Financial Standards Accounting Board (FASB) and shall include a balance sheet, statement of income and expenses, cash flow statement, other statements as determined by the independent CPA, and footnotes where applicable.

"Full-time employee" means a person employed by a new or expanding emerging technology or biotechnology company 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 and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or who is a partner of a new or expanding emerging technology or biotechnology company 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. To qualify as a "full-time employee," an employee shall also receive from the new or expanding emerging technology or biotechnology company 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 chapter 27 of Title 17B of the New Jersey Statutes. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the new or expanding emerging technology or biotechnology business.

"Greater New Brunswick innovation zone" means the innovation zone bounded as follows: in the north by Route 287 to Stelton Road to Metlars Lane to Route 18, in the east by Route 1, in the south by Suydam Road/Claremont Road/Finnegan's Lane, and in the west by the Millstone River

and Raritan River, which includes parts of North Brunswick, New Brunswick, Piscataway and Franklin Township and Rutgers University's Livingston campus.

"Innovation zone" means any of the three zones located in the northern, central and southern portions of New Jersey designated by the Authority as the Newark innovation zone, North/New Brunswick innovation zone and Camden innovation zone, respectively.

"License" means an agreement that states therein that it is granting a license and that authorizes the applicant to control aspects of the development of the protected proprietary intellectual property. The protected proprietary intellectual

property must be directly related to the applicant's primary business of providing a scientific process, product, or service. License shall not include an agreement, such as an exclusive distribution agreement or similar business arrangement that is not registered with the U.S. Federal Government, such as the U.S. Patent and Trademark Office, that does not grant the applicant control of the protected proprietary intellectual property.

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

“New or expanding” means a technology or biotechnology company that:

1. On June 30 of the year in which the company files an application for surrender of unused but otherwise allowable tax benefits under P.L. 1997, c. 334 (N.J.S.A. 34:1B-7.42a et al.) and on the date of the exchange of the corporation business tax benefit certificate, has fewer than 225 employees in the United States of America;

2. On June 30 of the year in which the company files such an application, has at least one full-time employee working in this State if the company has been incorporated for less than three years, has at least five full-time employees working in this State if the company has been incorporated for more than three years but less than five years, and has at least 10 full-time employees working in this State if the company has been incorporated for more than five years; and

3. On the date of the exchange of the corporation business tax benefit certificate, the company has the requisite number of full-time employees in New Jersey that were required on June 30 as set forth in paragraph 2 above.

In calculating the number of employees under this definition, employees of all affiliates and subsidiaries as shown on its consolidated financial statements, employees of any company that owns or controls at least 50 percent of the applicant, as well as the employees of any consolidated group of affiliated corporations as filed for Federal income tax purposes shall be included.

“Newark innovation zone” means the innovation zone in the northern part of the State bounded as follows: in the north by Interstate 280, in the east by McCarter Highway (Route 21) and the Pennsylvania Railroad, in the south by Market Street to South Orange Avenue, and in the west by Bergen Street.

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

“Protected proprietary intellectual property” means intellectual property that is protected via a patent pending, patent awaiting approval, approved patent or registered copyright.

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

cannot reduce the tax liability below the statutory minimum, as set forth in N.J.S.A. 54:10A-5.24.

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

“Technology business” means an emerging corporation, that has a headquarters or base of operations located in New Jersey, that owns, has filed for, or has a license to use protected, proprietary intellectual property whose primary business is the provision of a scientific process, product, or service 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. Examples of activities satisfying this definition include: the designing and developing of computing hardware and software; the research, development, production, or provision of materials with engineered properties created through the company’s development of specialized processing and synthesis technology and the research, development, production or provision of 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.

“Unused net operating loss carryover” means net operating loss for any tax year as defined 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”.

Amended by R.2005 d.274, effective August 15, 2005.
See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Added “Camden innovation zone”, “Innovation zone”, “Newark innovation zone” and “North/New Brunswick innovation zone” definitions.

Amended by R.2006 d.284, effective August 7, 2006.
See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

In definition “Biotechnology business”, substituted “corporation” for “company” and inserted “that owns, has filed for, or has a license to use protected, proprietary intellectual property”; in definition “New or expanding”, added the last sentence; and rewrote definition “Technology business”.

Amended by R.2008 d.164, effective June 16, 2008.
See: 40 N.J.R. 1630(a), 40 N.J.R. 3748(a).

Rewrote definition “New or expanding”.
Amended by R.2010 d.206, effective October 4, 2010.
See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

In definition “Allowable expenditures”, substituted “business” for “company” and inserted “and” preceding “research”; rewrote definitions

"Biotechnology business", "New or expanding" and "Unused net operating loss carryover"; in definition "Camden innovation zone", substituted "Bridge" for "bridge"; added definitions "Financial statements", "Full-time employee", "Greater New Brunswick innovation zone", "License" and "Protected proprietary intellectual property"; and deleted definitions "New applicant", "North/New Brunswick innovation zone", "Re-certification applicant" and "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; and
3. Meets the definition of new or expanding.

(b) No application shall be approved in which the business:

1. Has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements; or
2. Is directly or indirectly at least 50 percent owned or controlled by another corporation that has demonstrated positive net operating income in any of the two previous full years of ongoing 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 operating income in any of the two previous full years of ongoing operations as determined on its combined financial statements.

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.
Amended by R.2006 d.284, effective August 7, 2006.
See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

In (a)2, inserted "and" at the end; rewrote (a)3; deleted (a)4; and added (b) and (c).

Amended by R.2010 d.206, effective October 4, 2010.
See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

In (a)3, deleted " provided that returning applicants are not required to meet this condition of eligibility"; in (b)1, inserted "operating" and "or"; deleted former (b)2; recodified former (b)3 as (b)2; in (b)2, inserted "operating" twice; and deleted (c).

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 \$2,500 application fee. Complete applications must be received by June 30 for each State fiscal year.

(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 in an amount equal to at least 80 percent of the surrendered tax benefit 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. Financial statements for the two most recent full years of operation;
4. A list of all affiliates and subsidiaries as reflected on the consolidated financial statements of the applicant, the number and location of all employees of such corporation(s) and the two most recent full years of financial statements for each;
5. 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, the number and location of all employees of such corporation(s), and the two most recent full years of financial statements for each;
6. A list of all corporations that form a consolidated group of affiliated corporations as filed for Federal income tax purposes, the number and location of all employees of such corporation(s), and financial statements for the two most recent full years of operation;
7. A representation as to the location of the applicant's primary place of business in an Innovation Zone;
8. A description of the applicant's technology or biotechnology business which shall demonstrate that such business is the primary business of the applicant and that the applicant meets the other criteria of the definition of technology or biotechnology business. Where applicable, documentation of protected proprietary intellectual property must be provided;
9. A list of all full-time employees employed in New Jersey, including social security number for each, and in the United States at the time of application and copies of most recent year's Federal and New Jersey W-3 forms for applicant, parent company and all related entities, or

“Act” means the Business Retention and Relocation Assistance Act, P.L. 2004, c.65.

“Affiliate” means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414). An entity may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes.

“Agreement” or “project agreement” means an agreement between a business and the Authority that sets the forecasted schedule for completion and occupancy of the project, the date the commitment duration shall commence, the amount of the applicable grant of tax credits, and other such provisions which further the purposes of P.L. 1996, c.25, as amended by P.L. 2004 c.65, §§ 1 through 16 (N.J.S.A. 34:1B-112 through 123.).

“Authority” means the New Jersey Economic Development Authority established under section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

“Board” means the Board of the New Jersey Economic Development Authority.

“Business” means an employer located in this State that has operated continuously in the State, in whole or in part, in its current form or as a predecessor entity for at least 10 years prior to filing an application to the program and which is subject to the provisions of N.J.S.A. 43:21-1 et seq. and may include a sole proprietorship, a partnership, or a corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986, or any other business entity through which income flows as a distributive share to its owners, limited liability company, nonprofit corporation, or any other form of business organization located either within or outside the State, such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder. For purposes of identifying full-time employees in eligible positions and retained State tax revenue, any such employees hired by or taxes paid by a professional employer organization (PEO) with which the business has entered into an employee leasing agreement shall be allocable to the business. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by an affiliate or based upon retained full-time jobs of an affiliate.

“Business employment incentive program grant” or “BEIP grant” means the grant made to a business by the New Jersey

Economic Development Authority pursuant to the provisions of P.L. 1996, c.26 (N.J.S.A. 34:1B-124 et al).

“Business retention or relocation grant of tax credits” or “grant of tax credits” means a grant which consists of the value of corporation business tax credits against the liability imposed pursuant to section 5 of P.L. 1945, c.162 (N.J.S.A. 54:10A-5) or credits against the taxes imposed on insurers pursuant to P.L. 1945, c.132 (N.J.S.A. 54:18A-1 et seq.), section 1 of P.L. 1950, c.231 (N.J.S.A. 17:32-15), and N.J.S.A. 17B:23-5, provided to fund a portion of retention and relocation costs pursuant to P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2004, c.65, and pursuant to this subchapter.

“Capital investment” means expenses that the business incurs following its submission of an application to the Authority pursuant to section 5 of P.L. 1996, c. 25 (N.J.S.A. 34:1B-116), but prior to the Capital Investment Completion Date, as shall be defined in the project agreement, for: the site preparation and construction, renovation, improvement, equipping of, or obtaining and installing fixtures and machinery, apparatus or equipment in, a newly constructed, renovated or improved building, structure, facility, or improvement to real property in this State; and obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure, or facility in this State. Provided, however, that “capital investment” shall not include soft costs such as financing and design, furniture or decorative items such as artwork or plants, or office equipment if the office equipment is property with a recovery period of less than five years. The recovery period of any property, for purposes of this definition, shall be determined as of the date such property is first placed in service or use in this State by the business, determined in accordance with section 168 of the Federal Internal Revenue Code of 1986 (26 U.S.C. § 168). For the purposes of this definition, cubicles and cubicles that include office equipment shall constitute capital investment. If the business is a tenant, expenses incurred on behalf of the tenant by the landlord and financed through the lease shall constitute capital investment expenses incurred by the tenant provided that the capital investment shall relate solely to the tenant’s leasehold space and not the common areas of the building and shall be supported by the documentation referenced in N.J.A.C. 19:31-14.6(a)1xii and 14.10(a)2.

“Certificate of compliance” means a certificate issued by the Authority pursuant to section 9 of P.L. 1996, c. 25 (N.J.S.A. 34:1B-120).

“Chief Executive Officer” means the Chief Executive Officer of the New Jersey Economic Development Authority.

“Commitment duration” means the tax credit term and five years from the end of the tax credit term specified in the project agreement entered into pursuant to section 5 of P.L. 1996, c.25 (N.J.S.A. 34:1B-116), as amended by P.L. 2004, c.65, and pursuant to this subchapter.

“Designated industry” means an industry identified by the Authority as desirable for the State to maintain, which may be designated and amended via promulgation of rules by the Authority to reflect changing market conditions.

“Designated urban center” means an urban center designated in the State Development and Redevelopment Plan adopted by the State Planning Commission, pursuant to P.L. 1985, c.398 (N.J.S.A. 52:18A-200).

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

“Eligible position” means a full-time position retained by a business in this State 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.

“Fiscal year” means the State fiscal year of July 1 to June 30.

“Full-time employee” means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the Authority, as full-time employment, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.) 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, as determined by the Authority, as full-time employment, and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. or an employee who is a resident of another state but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. or who is a partner of a business 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 determined by the Authority, 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. “Full-time employee” shall not include any person who works as an independent contractor or on a consulting basis for the business.

“New business location” means the premises to which a business will relocate that the business has either purchased or built or for which the business has entered into a purchase agreement or a written lease for a period of no less than the commitment duration or eight years, whichever is greater, from the date of relocation. A “new business location” also

means the business’s current location or locations if the business makes a capital investment equal to the total value of the business retention or relocation grant of tax credits to the business at that location or locations. In the event the new business location will be at more than one location, the business may evidence that the application is for a single project through factors showing interrelatedness, such as the same business event driving the relocation, moves timed together, and full-time jobs relocated from the same business location.

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

“Program” means the Business Retention and Relocation Assistance Grant Program created pursuant to P.L. 1996, c.25, as substantially amended by P.L. 2004, c.65, §§ 1 through 16 (N.J.S.A. 34:1B-112 through 123) and P.L. 2010, c. 123, and provided in this subchapter.

“Project” means the relocation or maintaining of retained full-time jobs at the approved site as improved by the new business location. In the event that the new business location will be at more than one location, the business may evidence that the application is for a single project through factors showing interrelatedness such as the same business event driving the relocation, moves timed together, and full-time jobs relocated from the same business location.

“Project agreement” means an agreement between a business and the Authority that sets the forecasted schedule for completion and occupancy of the project, the date the commitment duration shall commence, the amount and tax credit term of the applicable grant of tax credits, and other such provisions which further the purposes of P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.).

“Retained full-time job” means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a potential relocation by the business, is at risk of being lost to another state or country. For the purposes of determining a number of retained full-time jobs, the eligible positions of an affiliate shall be considered the eligible positions of the business. A retained full-time job is one that will not be included in the calculation of a BEIP grant subsequent to being moved to the approved project site, under the agreement. The number of retained full-time jobs shall mean the business’s number of permanent full-time jobs as referred to in the project description in the application and the agreement, which exist as of the effective date of the agreement. In order to demonstrate that a job meets this definition, a business must provide documentation that demonstrates the at-risk nature of these employees which shall include a certification of the business’s chief executive

officer that the jobs are at-risk at being located outside of New Jersey.

“Retained State tax revenue” means either State tax revenue received in the most recently completed State tax period or State tax revenue projected to be received from the business by the State.

“Tax credit term” means the period of time commencing with the first issuance of tax credits and continuing during the period in which the recipient of a grant of tax credits is eligible to apply the tax credits pursuant to section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3).

“Tax period” means the 12-month period selected by the business for the purposes of determining annual taxable income.

“Yearly tax credit amount” means \$1,500 times the number of retained full-time jobs. “Yearly tax credit amount” does not include the amount of any bonus award authorized pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1).

Amended by R. 2006 d.197, effective May 15, 2006.
See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Substituted “. For” for “for” in definition “Business”; and added the last sentence in definition “Project”.

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

Deleted definition “Construction contract; and rewrote definition “Project”.

Amended by R.2008 d.53, effective March 3, 2008.

See: 39 N.J.R. 4385(a), 40 N.J.R. 1355(a).

In definition “Business”, inserted “, such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder”.

Recodified from N.J.A.C. 12A:2-1.2 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In definition “Agreement”, substituted “Authority” for “Commission”; added definitions “Authority”, “Board” and “Chief Executive Officer”; deleted definitions “Board of Directors”, “Commission”, and “Secretary”; and rewrote definition “Full-time employee”.

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Deleted definitions “Advanced computing”, “Advanced computing company”, “Advanced materials”, “Advanced materials company”, “Biotechnology”, “Biotechnology company”, “Electronic device technology”, “Electronic device technology company”, “Headquarters”, “High-technology business”, “Manufacturing facility”, “Medical device technology”, “Medical device technology company”, “Research and development facility” and “Total allowable relocation costs”; added definitions “Affiliate”, “Capital investment”, “Certificate of compliance”, “Project agreement”, “Tax credit term”, “Tax period” and “Yearly tax credit amount”; and rewrote definitions “Business”, “Commitment duration”, “Designated industry”, “Full-time employee”, “New business location”, “Program”, “Project” and “Retained full-time job”.

19:31-14.3 Eligibility criteria

(a) To qualify for the program, a business shall:

1. Enter into a project agreement with the Authority to undertake a project to:

i. Relocate or maintain a minimum of 50 retained full-time jobs from one or more locations within this

State to a new business location or locations in this State; and

ii. Maintain the retained full-time jobs pursuant to the project agreement for the commitment duration.

(b) A project that consists solely of point-of-final-purchase retail facilities shall not be eligible for a grant of tax credits.

1. If a project consists of both point-of-final-purchase retail facilities and non-retail facilities, only the portion of the retained full-time jobs housed in the project consisting of non-retail facilities shall be eligible for a grant of tax credits.

2. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the retained full-time jobs housed in the warehouse facility shall not be eligible for a grant of tax credits.

(c) A business shall demonstrate that the receipt of assistance pursuant to this program will be a material factor in the business’ decision not to relocate the retained full-time jobs outside of New Jersey; except a business that relocates 1,500 or more retained full-time jobs covered by a project agreement from outside of a designated urban center to one or more new locations within a designated urban center shall not be required to make such a demonstration if the business applies for a grant of tax credits within six months of signing its lease or purchase agreement. A business that has had grant pre-application meetings with the Authority and has executed contracts relating to the new business location during the period commencing May 1, 2010 until January 6, 2011 shall not be deemed ineligible for the grant due to the material factor requirement.

(d) A business shall demonstrate to the Authority, at the time application, that the grant of tax credits and resultant retention of full-time jobs and any capital investment will yield a net positive benefit to the State equaling at least 110 percent of the grant of tax credits during the commitment duration. The net benefit resulting from the retention of full-time jobs and any capital investment by a business that has had grant pre-application meetings with the Authority and has executed contracts relating to the new business location during the period commencing May 1, 2010 until January 6, 2011, shall be calculated from the date of the initial grant pre-application meeting.

(e) A business shall provide evidence that the business or a predecessor entity has been operating, in whole or in part, in this State for at least 10 years prior to the filing of an application under this program.

Recodified from N.J.A.C. 12A:2-1.3 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In the introductory paragraph of (a)1, substituted “Authority” for “Commission”; and in (a)1i, substituted “50” for “250”.

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In (a)1i, inserted "or maintain"; in (c), inserted "the retained full-time jobs" and inserted the last sentence; added new (d); and recodified former (d) as (e).

19:31-14.4 Restrictions on eligibility

(a) A business that is receiving a Business Employment Incentive Program grant shall not be eligible to receive a grant of tax credits under this program with respect to a job that is included in the calculation of a BEIP grant pursuant to P.L. 1996, c.26 subsequent to being moved to the approved project site.

(b) A business that is receiving any other grant by operation of State law shall be eligible to receive a grant of tax credits under this program provided:

1. A business that is receiving another State grant shall not be eligible to receive assistance with respect to any job that is currently the subject of any other State grant, except for grants from the Office of Customized Training pursuant to the 1992 New Jersey Employment and Workforce Development Act, P.L. 1992, c.43 (N.J.S.A. 34:15D-1 et seq.).

2. The State will realize a net positive benefit from the grant of tax credits and resultant retention of full-time jobs and any capital investment when combined with any other State grants equaling at least 110 percent of the grant of tax credits during the commitment duration but not less than eight years, except upon approval of the State Treasurer.

3. Amounts received as grants from the Office of Customized Training pursuant to the 1992 New Jersey Employment and Workforce Development Act, P.L. 1992, c.43 (N.J.S.A. 34:15D-1 et seq.), shall be excluded from the calculation of the total amount permitted.

(c) A business that is in default with any other program administered by the State of New Jersey shall not be eligible to receive a grant of tax credits under this program.

Recodified from N.J.A.C. 12A:2-1.4 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In the introductory paragraph of (b), substituted "provided" for "except as follows"; rewrote (b)2; and in (b)3, deleted "under (b)2 above" from the end.

19:31-14.5 Requests for applications

All application requests shall be made to the New Jersey Economic Development Authority, 36 West State Street, P.O. Box 990, Trenton, NJ 08625 on forms and/or in a manner prescribed by the Authority.

Recodified from N.J.A.C. 12A:2-1.5 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Rewrote the section.

19:31-14.6 Application submission requirements

(a) Each application to the Authority shall include the following information in an application format prescribed by the Authority:

1. Business information shall include the following:

- i. The name of the business;
- ii. The address of the business;
- iii. The type of business;
- iv. Principal products and services;
- v. The contact person for this application;
- vi. The New Jersey tax identification number;
- vii. The Federal tax identification number;
- viii. The total number of employees in New Jersey;
- ix. The total number of years of operation in New Jersey including evidence that the business or a predecessor entity has been operating, in whole or in part, in this State for at least 10 years prior to the filing of the application;
- x. Certification that the business applying for this program is not in default with any other program administered by the State of New Jersey;
- xi. Unless excepted under N.J.A.C. 19:31-14.3(c), certification that the availability of financial assistance from the State as provided in this program at the site proposed for approval is a material factor in the business' decision not to relocate outside of New Jersey and that the employees to be covered are at-risk of being relocated outside of the State, and instead, to undertake the project and to relocate the full-time jobs relating to the project in the State;
- xii. If the applicant is a tenant with capital investment expenses incurred on behalf of the tenant by the landlord, the tenant's chief executive officer and the landlord shall certify to the amount of additional tenant improvements that the landlord is undertaking on behalf of the tenant and shall certify that the rent amortizes these tenant improvements over the term of the lease; and, the tenant shall provide evidence satisfactory to the Authority to support such certification, which may include evidence of comparable market rents;
- xiii. Indication of whether the business has applied for other State tax benefits, including, but not limited to, the programs authorized under P.L. 2004, c.65; and
- xiv. Any other necessary and relevant information as determined by the Authority for a specific application.

2. Project information shall include the following:

- i. An overall description of the proposed project;
- ii. The current location(s) (address(es)) and number of employees for each site that is subject to this application;
- iii. The location(s) employees will be relocated from and identify the location(s) employees will be relocated to as per this application. Include number of employees for all sites;
- iv. A description of the quality of the full-time jobs retained, including, but not limited to, the salaries and benefits provided to retained full-time employees;
- v. A description of any capital investments made by the business at the new business location;
- vi. Identification of the site of the new business location and its consistency with the smart growth 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) or if the site is outside the jurisdiction of the State Plan, evidence of approval under the applicable comprehensive management plan;
- vii. A project schedule that identifies projected move dates for each site;
- viii. A schedule of short-term and long-term employment projections of the business in the State based upon the relocation;
- ix. The terms of any lease agreements, either existing or proposed, or details of the purchase or building of the new business location;
- x. An estimate of the projected retained State tax revenues resulting from the relocation. "State tax revenue" includes all taxes which for the business are due and paid to the State, including, but not limited to, the payroll withholding taxes. This term does not include that portion of taxes for which it is simply a registered collection agent;
- xi. A description of employment, construction and related economic activity in order to inform the net benefit analysis and calculation of a bonus, if applicable;
- xii. A description of the type of contribution the business can make to the long-term growth of the State's economy and a description of the potential impact on the State's economy if the jobs are not retained;
- xiii. Unless excepted under N.J.A.C. 19:31-14.3(c), evidence of alternative relocation plans, such as an analysis of the cost effectiveness of remaining in this State versus relocation under the alternative plans; and
- xiv. Any other necessary and relevant information as determined by the Authority for a specific application.

3. The employee information shall include the following:

- i. A written certification that the employees that are the subject of this application are full-time employees and receive health care benefits;
- ii. The number of employees at the project site that will be included in a BEIP grant calculation and the New Jersey Economic Development Authority BEIP project identification number;
- iii. Evidence of the applicant's potential relocation to another site within New Jersey, if the applicant is a BEIP grantee; and
- iv. Any other necessary and relevant information as determined by the Chief Executive Officer for a specific application.

Amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Deleted (b).

Recodified from N.J.A.C. 12A:2-1.6 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In the introductory paragraph of (a), substituted "Authority" for "Commission" twice; in (a)1xi and (a)2xiii, updated the N.J.A.C. references; in (a)1xiii, (a)2xiv and (a)3v, substituted "Chief Executive Officer" for "Secretary"; in (a)3iii, deleted "that the New Jersey Economic Development Authority has been notified" following "Evidence"; and deleted (b).

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In (a)1xi, inserted "and that the employees to be covered are at-risk of being relocated outside of the State"; added new (a)1xii; recodified former (a)1xii and (a)1xiii as (a)1xiii and (a)1xiv; in (a)1xiv, substituted "Authority" for "Chief Executive Officer"; in (a)2ix, inserted "either existing or proposed."; rewrote (a)2xi; in (a)2xiv, substituted "Authority" for "Chief Executive Officer"; in (a)3iii, inserted "and" at the end; deleted former (a)3iv; and recodified former (a)3v as (a)3iv.

19:31-14.7 Review of application

(a) Applicants shall submit to the Authority a completed BRRAG Program application at least 45 days prior to moving to the new business location; provided, however, a business relocating 1,500 or more retained full-time jobs to one or more new locations within a designated urban center shall, if relocating to a leased location, submit an application within six months of executing its lease. A company that has had grant pre-application meetings with the Authority and has executed contracts relating to the new business location during the period commencing May 1, 2010 until the enactment of P.L. 2010, c. 123 shall not be deemed ineligible for the grant due to the requirement to apply 45 days before moving to the new business location. The application shall bear either a legible post-mark date or a date-received stamp from the Authority.

(b) The Authority shall conduct a review of the applications commencing with the application bearing the earliest submission date. The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incom-

plete. The Authority shall review, and provide a recommendation to the Chief Executive Officer regarding, the applications to determine whether the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Adequately provides information for the subject application.

(c) In determining whether the company meets the net benefit analysis, as detailed in N.J.A.C. 19:31-14.3(d), the Authority's consideration shall include, but not be limited to, the State taxes paid directly by and generated indirectly by the business, and taxes paid directly or generated indirectly by new or retained employees caused by the business's relocation or maintaining of full-time jobs. For a business that has had grant pre-application meetings with the Authority and has executed contracts relating to the new business location during the period commencing May 1, 2010 until January 6, 2011, such determination shall be calculated from the date of the initial grant pre-application meeting.

(d) The Board shall approve, approve with modifications, or deny an application in the program.

(e) When the Board approves or denies a request, the minutes of the meeting at which such action occurs are submitted to the Governor for review and become effective 10 working days of the Governor's receipt of the minutes unless earlier approval or vetoed.

(f) If there has been no veto, a Commitment Letter shall be issued to the applicant, which contains all terms and conditions of the grant. The business must execute and return the Commitment Letter within 30 days. Failure to execute and return the Commitment Letter to the Authority within 30 days will result in rescission of the grant. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of a Commitment Letter upon request by the business.

(g) When all required documentation as outlined in the Commitment Letter is submitted by the business, in form and content satisfactory to the Authority, a Grant Agreement shall be prepared by the Authority and forwarded to the business for execution.

(h) If the business does not execute and return the Grant Agreement within 60 days from the date of issuance, the grant shall be rescinded.

(i) If the business does not commence the project within one year from the date of approval by the Members of the Authority, the grant shall be rescinded. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of the grant upon request by the business.

(j) If the application has been approved or approved with modification, the Chief Executive Officer shall notify the

Director of the terms and conditions of the approval. Any approval or approval with modification shall be subject to completion of the project.

Amended by R. 2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Substituted "moving to" for "commencing construction or acquisition of" in the first sentence of (a).

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In (f)1, deleted "and relocation of the retained full-time jobs" following "project".

Recodified from N.J.A.C. 12A:2-1.7 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and (b), substituted "Chief Executive Officer" for "Secretary" and "Authority" for "Commission" throughout; in (c), deleted "Secretary after receipt and consideration of the recommendation from the" preceding and "of Directors," following "Board"; in (d), substituted "approves or denies a request" for "of Directors recommends to either approve or deny a request"; rewrote (e); added new (f), (g) and (h); recodified former (f) as (i); and in the introductory paragraph of (i), deleted "pursuant to (d) and (e) above" following "modification" and substituted "Chief Executive Officer" for "Secretary" and the first occurrence of "approval" for "project agreement".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In (a), substituted "Authority" for "Chief Executive Officer", and inserted the next-to-last sentence; in the introductory paragraph of (b), deleted "including those applications submitted to the Authority prior to May 16, 2005" following "date"; added new (c); recodified former (c) through (i) as (d) through (j); and rewrote (j).

19:31-14.8 Determination of grant amount

(a) Subject to the limitation set forth in N.J.A.C. 19:31-14.11(c) and (d), grants of tax credits shall be approved for qualifying businesses according to the following schedule, and shall be issued upon the execution and satisfaction of the requirements of the project agreement between the Authority and the business with an approved project:

1. For a project that covers a business relocating or retaining 50 to 250 full-time employees, a grant of tax credits shall be for the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1), and may be applied against liability in the tax period in which the tax credit is issued;

2. For a project that covers a business relocating or retaining 251 to 400 full-time employees, a grant of tax credits shall be for two times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1), and may be applied against liability in the tax period in which the tax credit is issued and the following tax period, for one-half of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance;

3. For a project that covers a business relocating or retaining 401 to 600 full-time employees, a grant of tax credits shall be for three times the yearly tax credit amount plus any applicable bonus award determined pursuant to

section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following two tax periods, for one-third of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance;

4. For a project that covers a business relocating or retaining 601 to 800 full-time employees, a grant of tax credits shall be for four times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following three tax periods, for one-fourth of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance;

5. For a project that covers a business relocating or retaining 801 to 1,000 full-time employees, a grant of tax credits shall be for five times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following four tax periods, for one-fifth of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance; and

6. For a project that covers a business relocating or retaining 1,001 or more full-time employees, a grant of tax credits shall be for six times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following five tax periods, for one-sixth of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance.

(b) In considering the award and the amount of any grant of tax credits, the Authority may consider, as part of the Authority's overall review process, the following factors:

1. The number of full-time jobs retained;
2. The quality of the full-time jobs retained, including, but not limited to, the salaries and benefits provided to retained full-time employees;
3. Any capital investments made by the business at the new business location;
4. The nature of the business' operations, including, but not limited to whether the business is a designated industry;
5. The potential impact on the State if the business were to relocate to another state;
6. The site of the new business location and its consistency with the smart growth 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);

7. Whether positions average at least 1.5 times the minimum hourly wage during the commitment duration;

8. The duration and extent of past operations by the business in New Jersey and any other information indicating the business' level of commitment to the State and the likelihood that the business will continue to operate in this State in the future; and

9. Any other necessary and relevant information as determined by the Authority for a specific application.

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In the introductory paragraph of (b), substituted ", up to" for "or", inserted "and" following "annual limit," deleted ", and considers the following factors:" following "12A:2-1.4"; and added last sentence.

Recodified from N.J.A.C. 12A:2-1.8 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and the introductory paragraph of (b), updated the N.J.A.C. references; in the introductory paragraph of (b) and in (b)9 substituted "Chief Executive Officer" for "Secretary"; and in the introductory paragraph of (b), substituted "50" for "250".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Rewrote the section.

19:31-14.9 Bonus award

(a) In addition to any grant of tax credits determined pursuant to section 7 of P.L. 2004, c.65 (N.J.S.A. 34:1B-115.3), a bonus award equivalent to 50 percent of the amount of the original grant of tax credits shall be made to any business that relocates more than 2,000 full-time employees covered by the project agreement from one or more locations outside of a designated urban center into a designated urban center, provided as follows:

1. All other applicable requirements of the program are satisfied; and

2. No grant of tax credits shall be awarded pursuant to this section for any job that is moved from its current location in an urban enterprise zone designated pursuant to the New Jersey Urban Enterprise Zones Act, P.L. 1983, c.303 (N.J.S.A. 52:27H-60 et seq.) to a location that is not within an urban enterprise zone.

(b) Notwithstanding (a)2 above, if the move from the urban enterprise zone is to a facility already owned or leased by the same business and that business already employs at least the same number of persons as those being relocated from the urban enterprise zone, a grant of tax credits may still be awarded pursuant to this section.

(c) In addition to any grant of tax credits determined pursuant to section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3), and in addition to any bonus award pursuant to (a) above, a bonus award equivalent to 50 percent of the amount of the

grant of tax credits pursuant to section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3) shall be made to any business that makes a capital investment in an amount that is at least twice that of the total value of the grant of tax credits granted pursuant to section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3) and the grant of tax credits pursuant to this subchapter. A bonus award made pursuant to this subsection may be limited, so that when added to the tax credits granted pursuant to section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3), the total amount shall not exceed 50 percent of the amount of the capital investment in this State.

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In (b), substituted "section" for "subchapter".

Recodified from N.J.A.C. 12A:2-1.9 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Added (c).

19:31-14.10 Project agreement

(a) All applicants shall execute an approval letter and a project agreement with the Authority to establish the terms and the conditions of the grant of tax credits. The approval letter will be subject to conditions subsequent that must be met in order to retain the award of tax credits. Such conditions shall include, but not be limited to:

1. The execution of a project agreement; and

2. For a tenant with capital investment expenses incurred on behalf of the tenant by a landlord, prior to execution of the project agreement, the tenant shall provide documentation satisfactory to the Authority consistent with the chief executive officer's certification in N.J.A.C. 19:31-14.6(a)lxii which may include, but not be limited to, a lease or letter of credit that demonstrates in the event of an early termination of the lease that the tenant is financially liable for the cost of the capital investment.

(b) The Authority staff may provide whatever assistance the Authority deems appropriate in the preparation of an application for approval of a project and may issue grants of tax credits pursuant to the project agreement entered between the Authority and the business.

(c) The project agreement shall include, but not be limited to, the following terms or conditions as determined by the Chief Executive Officer:

1. The month and year in which the business will relocate its employees, the month and year in which the business will submit information relating to the relocation of the required number of retained employees required by N.J.A.C. 19:31-14.11(b) and, if applicable, the certification required by (c)2 below, and the State fiscal years for which the tax credits are allocated, which will not be subject to

change without written approval of the Authority. Failure to adhere to these dates may lead to forfeiture of all or a part of the tax credits;

2. A requirement that a certification by a certified public accountant relating to the amount of eligible capital investment with supporting evidence satisfactory to the Authority shall be submitted by the business or, in the case of a tenant, the landlord prior to the commencement of the tax credit term. Provided that such certification and supporting evidence are satisfactory to the Authority, the tax credit certificate will be issued within 90 days of submission;

3. An agreement by the applicant that the four-year statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax will be extended to the period of the commitment duration;

4. Certifications by the business, including the following: eligibility for the program and participation in the program as a material factor in the business' decision not to relocate outside of New Jersey and to relocate the project in the State;

5. Requirements for undertaking the project;

6. Requirements on maintaining the existence of the business and not relocating the project;

7. Representations that the business is in good standing, the project complies with all applicable law, and specifically, that the project does not violate any environmental law;

8. Indemnification and insurance requirements;

9. Limitations on the grant of tax credits;

10. Default and remedies; and

11. Reporting requirements.

(d) The project agreement shall provide that no tax credits issued as a grant of tax credits under the program may be applied by the business against liability until the State Treasurer has certified that the amount of retained State tax revenue from the business for the tax period prior to the period in which the credits will be applied equals or exceeds the amount of tax credits to be applied by the business.

(e) The project agreement shall further provide that the Authority is not liable in damages for the issuance or use of the tax credits; and that there is no guarantee that legislation will not be enacted that would cause further changes to P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.)

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In (c), substituted "The" for "In the case of a business relocating between 250 and 499 full-time employees, the" at the beginning.

Recodified from N.J.A.C. 12A:2-1.10 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a), substituted "Authority" for the first occurrence of "Secretary" and "Chief Executive Officer" for the second through fifth occurrences of "Secretary"; in the introductory paragraph of (b), substituted "Chief Executive Officer" for "Secretary"; and in (b)3, substituted "Certifications" for "Unless excepted under N.J.A.C. 12A:2-1.3(e)1, certifications".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Rewrote the section.

19:31-14.11 Tax credit applicable; when effective; when adjusted

(a) A tax credit issued pursuant to this program may be applied solely against liability in the tax period(s) and in the State fiscal year(s) prescribed in the project agreement and in the manner set forth in N.J.A.C. 19:31-14.8(a) and shall expire thereafter.

(b) By the date indicated in the project agreement, the applicant shall submit a certification to the Chief Executive Officer that it has relocated the retained employees. To the extent that the number of employees is less than the number indicated on its application but remains 50 or more, the award of tax credits shall be adjusted accordingly and the project agreement shall be amended to so reflect the reduction pursuant to N.J.A.C. 19:31-14.13(b).

(c) The total value of the grants of tax credits approved by the Authority pursuant to this program that may be applied against tax liability in a fiscal year shall not exceed an aggregate annual limit of \$20,000,000. If the approval of a grant of tax credits pursuant to N.J.A.C. 19:31-14.8(a) would exceed the \$20,000,000 aggregate annual limit, the Authority may award a smaller grant of tax credits, no grants of tax credits or may assign credits to be issued in subsequent years, as necessary to comply with the aggregate limit.

(d) The total value of the grants of tax credits, issued pursuant this program, that a single business may apply against its tax liability shall not exceed an aggregate annual limit of \$10,000,000 in a fiscal year. A tax credit issued pursuant to this program may be applied against liability in the single tax period in which the tax credit or portion of the tax credit may be applied as prescribed in the project agreement and as set forth in N.J.A.C. 19:31-14.8(a) and shall expire thereafter.

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

Section was "Tax credit applicable; when effective; when reduced". In (c), substituted "500 or more" for "over 500"; and in (e), substituted "(c)" for "(c) or (d)" preceding "above in a fiscal year", and substituted "(d)" for "(c) or (d)" preceding "above, exceeds".

Recodified from N.J.A.C. 12A:2-1.11 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (b), (c) and (e), substituted "Chief Executive Officer" for "Secretary" throughout; in (d), substituted "50" for "250"; and in (e), updated the N.J.A.C. reference.

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Rewrote the section.

19:31-14.12 New business location for the project

(a) Once the project agreement is fully executed by the business and the Authority, the business shall complete the project and seek a temporary certificate of occupancy and such other permits and approvals as may be required for the new business location in a timely manner, as further described in the project agreement.

(b) The business shall design, acquire, install, and operate the new business location in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) related to zoning, building safety, and environmental quality.

(c) The business shall not use any hazardous substance on, from, or affecting the new business location in any manner which violates any environmental law, and shall keep or cause the new business location to be kept free of hazardous substances, except as provided in applicable environmental law.

(d) The business shall comply with the Authority's prevailing wage requirements, N.J.A.C. 19:30-4, and affirmative action requirements, N.J.A.C. 19:30-3, in the performance of the construction contract for the project, provided that prevailing wage shall not be required for construction commencing more than two years after an entity has executed with the Authority a commitment letter and the first payment or other provisions of assistance is received.

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

Section was "Undertaking the project". In (a), inserted "for the new business location"; in (b) and (c), substituted "new business location" for "project" throughout; rewrote (d); and added (e).

Recodified from N.J.A.C. 12A:2-1.12 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and (e), substituted "Authority" for "Commission"; in (d), substituted "Authority's" for "Commission's" and "P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1)" for "(N.J.S.A. 52:27C-73.1 and implementing rules at N.J.A.C. 12A:2A-3)"; and in (e), substituted "Authority's affirmative action requirements" for "Commission's set-aside program goals and targets" and "P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4)" for "N.J.A.C. 12A:10 and Executive Order No. 71 (October 2, 2003)".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Rewrote (d); and deleted (e).

19:31-14.13 Reporting requirements and annual reports

(a) If requested by the Authority, a business which is awarded a grant of tax credits under this program shall submit a copy of the State tax return for the business showing business income or activity, appropriate to its form of ownership.

(b) As determined by the Authority, a business which is awarded a grant of tax credits under P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.) shall submit annually, no later than March 1st of each year, commencing in the year in which the grant of tax credits is issued and for the remainder of the commitment duration, a certification of compliance that indicates that the business continues to maintain the

number of retained full-time jobs as specified in the project agreement. Retained full-time jobs shall be calculated by averaging the monthly average of the business' retained full-time jobs in the previous calendar year, provided if the previous calendar year is the year in which the business submitted the certificate required by N.J.A.C. 19:31-14.11(b), such calculation shall use only the months since the submission of the certificate. Upon receipt and review thereof during the tax credit term, the Authority shall issue a certificate of compliance indicating the amount of tax credits that the business may apply against liability pursuant to section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3). Any reduction in the number of retained full-time jobs below the number prescribed under the terms of the project agreement shall proportionately reduce the amount of tax credits the business may apply against liability in that tax period and the credits that may no longer be applied for that tax period shall be forfeited. However, if in any tax period, the number of retained full-time jobs drops below the minimum number of retained full-time jobs indicated in the paragraph of subsection b. of section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3) pursuant to which the project agreement was executed such that the business would no longer be eligible to apply the credits for the number of years for which it was approved, then the Authority shall reduce the amount of tax credits the business may apply against liability and the number of years in which the business may apply the tax credits. The grant shall be subject to recapture provisions pursuant to the project agreement.

(c) The project agreement may provide for additional reporting requirements.

Recodified from N.J.A.C. 12A:2-1.13 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) through (c), substituted "Chief Executive Officer" for "Secretary" throughout.

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In (a), substituted "Authority" for "Chief Executive Officer"; rewrote (b); deleted former (c); and recodified (d) as (c).

19:31-14.14 Fees

(a) A non-refundable application fee of \$1,000 shall accompany every application for assistance.

(b) A non-refundable commitment fee of two percent of the assistance not to exceed \$75,000 shall be charged with the acceptance by an applicant of the assistance.

(c) A non-refundable fee of \$750.00 shall be paid for each request for any administrative changes, additions or modifications to the grant; and a non-refundable fee of \$1,500 shall be paid for any major changes, additions or modifications to the grant, such as those requiring extensive staff time and Board approval.

(d) In addition to the fees in (a), (b) and (c) above, an annual servicing fee shall be paid to the Authority. The ser-

ving fee shall be two percent of the annual tax credit amount that may be applied not to exceed \$75,000.

New Rule, R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2-1.14, Events of default, recodified to N.J.A.C. 12A:2-1.15.

Recodified from N.J.A.C. 12A:2-1.14 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Added (d).

19:31-14.15 Events of default

(a) The occurrence of any one or more of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall constitute an "event of default" under the project agreement:

1. The business fails to strictly observe or comply with the limitations and conditions of the use of the grant of tax credits as set forth in this subchapter, the tax credit certificate and the project agreement;

2. Any representation or warranty made by the business in its application or in the project agreement that is false, misleading, or inaccurate in any material respect;

3. Failure to comply with any condition or requirement of the project agreement; or

4. The business fails to serve or perform in any other material respect any other term, covenant or condition of the business under the project agreement and this subchapter and such failure shall have continued for 30 days after the earlier of delivery to the business of written notice thereof from the Authority or the business's actual or constructive knowledge of such failure; provided, however, that if such failure is capable of cure, but cannot be cured by the payment of money or by diligent efforts within such 30-day period, but diligent efforts are properly commenced within the cure period and business is diligently pursuing, and shall continue to pursue diligently, remedy of such failure, the cure period shall be extended for an additional period of time, not to exceed an additional 45 days and in no case to extend beyond the expiration of the project agreement. Violations of the "events of default" provision of the project agreement shall be cause for immediate termination of the tax credit certificate as provided by law and repayment of State tax.

(b) Upon a default under the project agreement, in addition to any other remedies in the project agreement and available under this subchapter and under the Act, the Authority may withhold any payment not yet paid at the time of the default under the project agreement. The Authority shall provide written notice to the business of its intent to withhold, reduce

19:31-17.4 Requests for applications and renewal applications

(a) All application requests shall be made to the New Jersey Economic Development Authority, 36 West State Street, P.O. Box 990, Trenton, NJ 08625, on forms and/or in a manner prescribed by the Authority.

(b) Annual renewal applications by applicants satisfying the criteria of N.J.A.C. 19:31-17.3 shall be required to be submitted annually within 45 days prior to the expiration date of the energy sales tax exemption.

Recodified from N.J.A.C. 12A:2A-4.4 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Rewrote (a); and in (b), updated the N.J.A.C. reference.

19:31-17.5 Application submission requirements

(a) Applicants shall submit to the Authority a completed Application for Energy Sales Tax Exemption signed by an authorized representative of the business. The application shall bear either a legible post-mark date or a date received stamp from the Authority.

(b) Each application for the energy sales tax exemption submitted to the Authority shall include the following:

1. The name, address and Employer Identification Number (EIN), also known as a Federal tax identification number, of the applicant;

2. The address of the facility that is the subject of this application;

3. The number of total full-time employees at the facility for which the exemption application is being submitted;

4. The number of full-time employees at that facility that are directly employed in the manufacturing process of the applicant;

5. The name and address of the company(ies) that supply, transmit, and distribute electricity and natural gas to the facility;

6. The account identification numbers and billing information including contact name for each account identified in (a)5 above;

7. An estimate of the facility's annual quantity use of electricity and natural gas in units and in dollars;

8. A description of the nature of the business and the facility for which the application is being made;

9. The North American Industrial Classification System identification number(s) relating to the applicant;

10. Certification that the business applying for this program is not in default with any other program administered by the State of New Jersey; and

11. Such additional information as may be required by the Chief Executive Officer to provide a complete and accurate description of a particular business that is applying for the exemption.

Recodified from N.J.A.C. 12A:2A-4.5 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and the introductory paragraph of (b), substituted "Authority" for "Commission" throughout; and in (b)11, substituted "Chief Executive Officer" for "Secretary".

19:31-17.6 Application review procedures

(a) The Authority shall conduct a review of the applications in the order received, commencing with the application bearing the earliest submission date. The Authority may require the submission of additional information to complete the application. Once the Authority determines that the application is complete, the Authority has 20 days to determine whether:

1. The application complies with the eligibility criteria;
2. The application satisfies the submission requirements; and
3. The application adequately provides information for the subject applicants.

(b) Upon completion of the review of an application pursuant to (a) above:

1. In the event that an application is approved, the Chief Executive Officer will promptly notify the applicant, the President of the Board of Public Utilities, and the Director that a business has met the requirements for the energy sales tax exemption. In accordance with P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.), the Division of Taxation shall then issue an Exemption Certificate to the approved applicant business.

2. In the event that an application is denied, the Chief Executive Officer will promptly notify the applicant of the denial and the reasons for the denial.

3. After notification of a denial, should the circumstances change so that the applicant reasonably believes its application will be approved, the applicant may reapply to the program no earlier than 90 days from the date the Chief Executive Officer issued the denial.

Recodified from N.J.A.C. 12A:2A-4.6 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In the introductory paragraph of (a), substituted "Authority" for "Commission" throughout; and in (b)1 through (b)3, substituted "Chief Executive Officer" for "Secretary" throughout.

19:31-17.7 Monitoring, inspection, and reporting

(a) The Authority and agents of the State of New Jersey shall monitor compliance with respect to the eligibility criteria and conditions for this energy sales tax exemption. An applicant that is approved to receive this exemption benefit

shall permit any agency of the State of New Jersey to enter said business during reasonable business hours to determine compliance with the eligibility criteria and conditions of the program. Failure to permit access for this purpose will result in the forfeiture of the exemption benefit and may require repayment of sales and use tax previously exempted from payment, as the Authority shall determine.

(b) Each business that receives this energy sales tax exemption shall be required to maintain records documenting all of its tax-exempt energy purchases. This information must be supplied to the Authority upon request. In addition, a report summarizing the totals of all exempt energy purchases must be provided for the prior year as a component of the annual renewal application.

(c) The Chief Executive Officer shall provide the President of the Board of Public Utilities and Director with an annual list of all businesses that have been approved under this subchapter.

Recodified from N.J.A.C. 12A:2A-4.7 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and (b), substituted "Authority" for "Commission" throughout; and in (c), substituted "Chief Executive Officer" for "Secretary".

19:31-17.8 Rescission

(a) The Chief Executive Officer, in addition to any other rights or remedies available pursuant to law, may withhold, reduce, or terminate this energy sales tax exemption or any portion thereof for good cause. The circumstances under which this may occur include, but are not limited to:

1. Failure to comply with the requirements of this subchapter, or other applicable State laws or rules, such as failure to maintain the employment levels or the direct employment in manufacturing process required for eligibility;

2. Submission of false or misleading information, or failure to submit relevant or complete information to the Authority;

3. Any act of insolvency, the filing of a petition in bankruptcy (voluntary or involuntary), or the existence of other conditions affecting the financial integrity of the business; or

4. Failure to comply with any condition, term, or requirement of the Authority relating to this program.

(b) The Chief Executive Officer shall provide written notice to the business of the intent to rescind the approval of the business' application for the energy sales tax exemption benefit.

(c) The Chief Executive Officer shall provide notice of the determination to rescind to the Director, who shall rescind the energy sales tax exemption certificate issued to the business.

(d) Any rescission of the energy sales tax exemption will require repayment by the business of all exempted tax payments, and such penalties as may be assessed in accordance with the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., from the effective date of the rescission as determined by the Authority.

Recodified from N.J.A.C. 12A:2A-4.8 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In the introductory paragraph of (a), in (b) and in (c), substituted "Chief Executive Officer" for "Secretary"; and in (a)2, (a)4 and (d), substituted "Authority" for "Commission".

19:31-17.9 Appeals

Appeals under this subchapter shall be subject to the appeal procedures governing the subchapter on sales and use tax exemption at N.J.A.C. 19:31-16.13.

Recodified from N.J.A.C. 12A:2A-4.9 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Updated the N.J.A.C. reference.