

(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).

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, 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. 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 project agreement, 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).

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

example, a business might submit that 90 percent of its manufactured output is physically packaged with the product made by another member of the vertically integrated group.

(c) Once the businesses seeking to qualify for the energy sales tax exemption as a qualified group are determined by the Authority to be a vertically integrated business activity, then the group application will be evaluated in combination with the other members of the group to determine if the group is eligible as a qualified group.

1. Each application submitted to the Authority by a group of vertically integrated qualified businesses shall include the submission requirements of (a) above for each individual business in the group.

2. In addition to (c)1 above, the application shall be required to provide evidence satisfactory to the Authority that all individual businesses in the group are located within a single redevelopment area.

3. The group as a whole, rather than each individual business, shall be considered in meeting eligibility requirements of directly employing at least 250 people within the single redevelopment area within the enterprise zone, at least 50 percent of whom are directly employed in a manufacturing process.

(d) In the case of a qualified group, each time an application from a new business seeking to be added to, or an existing business seeking to be deleted from, the qualified group, the submission requirements of this section shall be required to be satisfied promptly for the group as so changed. If no new businesses are added or existing businesses are deleted during the year, the annual renewal requirements of N.J.A.C. 19:31-13.4 for qualified groups shall apply.

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

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

Inserted "including contract name" in (a)6; and in (c) substituted "the businesses" for "a business", "are" for "is" and "the group" for "its", inserted "a" preceding "vertically" and inserted "activity".

Amended by R.2006 d.323, effective September 5, 2006.

See: 38 N.J.R. 1524(a), 38 N.J.R. 3619(a).

In (a)7, inserted "in units and in dollars"; in the introductory paragraph of (c), inserted "a" preceding "vertically"; and in (c)3, substituted "250" for "500".

19:31-13.6 Application and review procedures

(a) Applicants shall submit to the Authority a completed Application for Energy Sales Tax Exemption. The application, signed by an authorized representative of the business, 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 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 or may require the submission of the entire application, if incomplete. The Authority shall review the applications 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.

(c) Program staff, after reviewing the application, shall make a recommendation to the Chief Executive Officer, who after consideration of that recommendation, shall approve, approve with modifications, or deny an application in the program.

(d) Upon completion of the review of an application pursuant to (b) above, the Authority shall notify the applicant whether the application has been approved by the Chief Executive Officer.

1. In the event that an application is approved, the Chief Executive Officer will notify the applicant, the President of the Board of Public Utilities and the Director, that a qualified business or a qualified group 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 (UZ-6) to the qualified business or qualified group.

2. In the event that an application is denied, the applicant shall be notified of the denial and the reasons for such 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.

(e) Once a qualified group is approved, each member of the group shall be subject to all the same provisions and procedures as any other qualified manufacturing business that is not a member of a qualified group. However, if the Chief Executive Officer subsequently determines that a previously qualified group is no longer eligible for the energy sales tax exemption, then each member of that group shall be required to immediately surrender its exemption certificate to the Chief Executive Officer.

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

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

Inserted "signed by an authorized representative of the business," in the second sentence of (a); inserted (c); and recodified former (c) and (d) as (d) and (e).

19:31-13.7 Monitoring, inspection, and reporting

(a) The Authority and agents of the State of New Jersey, shall monitor compliance with respect to the eligibility criteria for this energy sales tax exemption. An applicant or any business that is approved to receive this exemption benefit shall permit any agent of the State of New Jersey to enter said business during reasonable business hours to determine

compliance with the eligibility criteria of the program. Failure to permit access to determine eligibility 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 qualified business and qualified group that receives this energy sales tax exemption shall be required to maintain records documenting all of its tax-exempt 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 or recertification application.

(c) Each qualified business and qualified group that receives approval of its application for the energy sales tax exemption shall notify the Authority if it ceases to meet the manufacturing and employment requirements for the energy sales tax exemption for more than a total of three weeks in any two consecutive months.

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

Added (c).

19:31-13.8 Rescission

(a) The Chief Executive Officer, in addition to any other rights or remedies available pursuant to law, may withhold, reduce, or terminate this sales and use 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;
2. Failure to comply with any condition or requirement of the Urban Enterprise Zone Program;
3. Failure to maintain the employment levels stipulated in the Urban Enterprise Zone Program;
4. Submission of false or misleading information, or failure to submit relevant or complete information to the Authority;
5. 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 applicant; or
6. 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 its intent to rescind the applicant's qualification status for the energy sales tax exemption benefit. The determination to rescind the benefit shall be solely within the Chief Executive Officer's discretion.

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

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

19:31-13.9 Appeals

Appeals under this subchapter shall be subject to the appeals procedures governing the subchapter on sales and use tax exemption at N.J.A.C. 12A:2A-2.13.

SUBCHAPTER 14. BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT PROGRAM

19:31-14.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1996, c.25, as substantially amended by P.L. 2004, c.65, §§ 1 through 16 (the "Act"). The Act provides several incentive programs aimed at retaining in New Jersey the full-time jobs of businesses already active in this State. The Act established a business retention and relocation assistance grant program ("BRRAG Program" or "Program"), a tax credit certificate transfer program, a sales and use tax exemption program, and an energy sales tax exemption program (for businesses located in New Jersey urban enterprise zones). The purpose of the BRRAG Program is to encourage economic development and to preserve jobs that currently exist in New Jersey, but which are in danger of being relocated to premises outside of the State. To implement that purpose, and to the extent that funding for the Program is available, the Program may provide grants of tax credits but in no case shall the amount of an individual grant of tax credits exceed the limitations set forth in this subchapter and further specified in the project agreement of an applicant for a grant of tax credits.

Recodified from N.J.A.C. 12A:2-1.1 and amended by R.2010 d.231, effective October 18, 2010.

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

Substituted "Economic Development Authority" for "Commerce, Economic Growth and Tourism Commission (the 'Commission')", deleted the fourth sentence, and inserted "BRRAG" preceding "Program is to encourage".

19:31-14.2 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 Business Retention and Relocation Assistance Act, P.L. 2004, c.65.

“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 with a headquarters or a base of operations located in New Jersey and 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 with headquarters or base of operations located in New Jersey and 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.

“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).

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

“Biotechnology company” means a person with a headquarters or a base of operations located in New Jersey and engaged in the research, development, production, or provision or 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 with a headquarters or a base of operations located in New Jersey and engaged in providing services or products

necessary for such research, development, production, or provision.

“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.

“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.

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

“Commitment duration” means five years from the date 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 a business engaged in the field of biotechnology, pharmaceuticals, manufacturing, financial services or transportation and logistics, advanced computing, advanced materials, electronic device technology, environmental technology or medical device technology.

“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.

“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 with a headquarters or a base of operations located in New Jersey and 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 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 who is employed for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., 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. “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” shall not include a child, grandchild, parent, or spouse of an individual who has direct or indirect ownership of at least five percent of the profits, capital, or value of the business.

“Headquarters” of a business means the single location that serves as the national administrative center of the business or the worldwide administrative center of a key division of the business, at which the primary office of the chief executive officer or chief operating officer of the business or the key division of the business, as well as the offices of the management officials responsible for key business-wide functions

such as finance, legal, marketing, and human resources, are located.

“High-technology business” means an advanced computing company, advanced materials company, electronic device technology company, environmental technology company or medical device technology company.

“Manufacturing facility” means a business location at which more than 50 percent of the business personal property that is housed in the facility is eligible for the sales tax exemption pursuant to subsection a. of section 25 of P.L. 1980, c.105 (N.J.S.A. 54:32B-8.13) for machinery, apparatus or equipment used in the production of tangible personal property.

“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 with a headquarters or a base of operations located in New Jersey and 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.

“New business location” means the premises 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 eight years from the date of relocation. A new business location may also include the premises from which the business moves on a temporary basis due to the rehabilitation of permanent premises that also qualifies as reconstruction as “reconstruction” is defined in the Uniform Construction Code, N.J.A.C. 5:23-6.3. In that case, the move to the permanent premises will trigger availability of the grant of tax credits.

“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 provided in this subchapter.

“Project” means the relocation 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 interrelat-

edness such as the same business event driving the relocation, moves timed together, and full-time jobs relocated from the same business location.

“Research and development facility” means a business location at which more than 50 percent of the business personal property that is purchased for the facility is eligible for the sales tax exemption pursuant to section 26 of P.L. 1980, c.105 (N.J.S.A. 54:32B-8.14) for property used in research and development.

“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 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 the members of a “controlled group of corporations” as defined pursuant to section 1563 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1563, shall be considered the eligible positions of a single employer. 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.

“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.

“Total allowable relocation costs” means \$1,500 times the number of retained full-time jobs. “Total allowable relocation costs” 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”.

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 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 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.

(d) 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”.

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 except as follows:

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. A business shall not receive an amount as a grant of tax credits pursuant to this program which, when combined with such other grants, exceeds 80 percent of the projected State tax revenues from the retained full-time jobs covered by the project agreement of an applicant for a grant of tax credits, except upon the 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 under (b)2 above.

(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).

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 instead, to undertake the project and to relocate the full-time jobs relating to the project in the State;

xii. 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

xiii. Any other necessary and relevant information as determined by the Chief Executive Officer 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 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. An analysis that indicates that the expected grant of tax credits will not exceed the retained State tax revenue from the business' most recently completed State tax period and that the expected grant of tax credits will not exceed 80 percent of the projected tax revenues from the retained full-time jobs covered by the project agreement;

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 Chief Executive Officer 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;

iv. A certification that the business will maintain 95 percent of the retained full-time jobs for at least the first two years of the commitment duration, and will maintain a minimum of 90 percent of the retained full-time jobs for the remainder of the commitment duration; and

v. 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).

19:31-14.7 Review of application

(a) Applicants shall submit to the Chief Executive Officer 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. 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, including those applications submitted to the Authority prior to May 16, 2005. 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 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) The Board shall approve, approve with modifications, or deny an application in the program.

(d) 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.

(e) 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.

(f) 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.

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

(h) 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.

(i) 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:

1. Completion of the project; and
2. Tax credits being available in the fiscal year in which the applicant certifies to (f)1 above.

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".

19:31-14.8 Determination of grant amount

(a) Any business relocating 500 or more full-time employees that is approved for a grant of tax credits, shall receive a grant equal to the total allowable relocation costs, plus any applicable bonus award, up to the aggregate annual limit of \$20,000,000, and subject to the restrictions and limitations on the grant set forth at N.J.A.C. 19:31-14.4.

(b) Any business that is relocating between 50 and 499 full-time employees approved for a grant of tax credits, shall receive a grant in an amount determined by the Chief Executive Officer that shall not exceed the total allowable relocation costs, up to the aggregate annual limit, and is subject to the restrictions and limitations on the grant set forth at N.J.A.C. 19:31-14.4. In determining the amount of any grant, the Chief Executive Officer shall consider 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; and

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.

9. Any other necessary and relevant information as determined by the Chief Executive Officer 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".

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.

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).

19:31-14.10 Project agreement

(a) All applicants shall execute a project agreement with the Authority to establish the terms and the conditions of the grant of tax credits. The Chief Executive Officer may provide whatever assistance the Chief Executive Officer 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 Chief Executive Officer and the business with an approved project at the Chief Executive Officer's discretion subject to the provisions of P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2004, c.65.

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

1. Terms establishing the starting date, or event that will determine the starting date and ending date, of the commitment duration;

2. 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;

3. 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;

4. Requirements for undertaking the project;

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

6. 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;

7. Indemnification and insurance requirements;

8. Limitations on the grant of tax credits;

9. Default and remedies; and

10. Reporting requirements.

(c) The project agreement shall further provide that no tax credits shall be issued as a grant of tax credits under the

program in any year until the State Treasurer has certified that the amount of retained State tax revenue received in the most recently completed State tax periods by the Director from the business equals or exceeds the amount of the grant of tax credits.

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".

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

(a) A tax credit issued pursuant to this program may be applied against liability arising in the tax period in which the tax credit is issued and the tax period next following, and shall expire thereafter. While some or all of the tax credit may not be used after the aforementioned tax periods, in the event that a liability arises against the business for the tax period in which the tax credit was issued or the following tax period, any unused grant of tax credit may be used to offset such liability.

(b) Provided that the applicant has previously executed the project agreement, within six months of relocation of the retained employees, 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, the award of tax credits shall be adjusted accordingly and the project agreement shall be amended to so reflect the reduction.

(c) Upon receipt of the certification referenced in (b) above, for a project that covers 500 or more full-time employees, the Chief Executive Officer shall allocate a grant of tax credits to the applicant. The Chief Executive Officer shall notify the Director of the terms and conditions of the project agreement and the Director shall issue the appropriate tax credit certificate(s).

(d) For a project that covers a business relocating between 50 and 499 full-time employees, a grant of tax credits shall not be issued until the end of the fiscal year in which the certification referenced in (b) above is received.

(e) The total value of the grants of tax credits issued pursuant to this program shall not exceed an aggregate annual limit of \$20,000,000 for any fiscal year. If the sum of the amount of tax credits issued pursuant to (c) above in a fiscal year, plus the amount of tax credits approved pursuant to (d) above exceeds the \$20,000,000 aggregate annual limit, the

Chief Executive Officer shall reduce the award to each business receiving a grant of tax credits pursuant to (d) above on a pro rata basis to the grant amounts determined in accordance with N.J.A.C. 19:31-14.8(b) to the extent necessary to comply with the aggregate annual limit.

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.

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) To the extent that the business (not an unaffiliated third party) has undertaken the construction of the new business location, the business shall comply with the Authority's prevailing wage requirements P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) in the performance of construction contracts.

(e) The Authority encourages a business constructing a new business location to comply with the Authority's affirmative action requirements set forth at P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4).

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)".

19:31-14.13 Reporting requirements and annual reports

(a) If requested by the Chief Executive Officer, 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 Chief Executive Officer, a business which is awarded a grant of tax credits under this program shall submit annually, no later than March 1st of each year, commencing the year following the calendar year in which the business was approved for the grant of tax credits and for the remainder of the commitment duration, an annual report listing the full-time employees in eligible positions employed at the location or locations approved for the grant of tax credits, to the Chief Executive Officer.

(c) Failure to submit a copy of its annual report or submission of the annual report without the information required above, may result in the forfeiture of any grant of tax credits to be received by the business and the recapture of any tax credits issued to the business unless the Chief Executive Officer determines that there are extenuating circumstances excusing the business from the timely filing required.

(d) 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.

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.

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).

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;

4. The business reduces or relocates the retained full-time jobs above the percentages certified under N.J.A.C. 19:31-14.6(a)3iv (greater than five percent during the first two years of the commitment duration; greater than 10 percent during the remainder of the commitment duration); or

5. 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 Chief Executive Officer 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.

Amended by R.2006 d.322, effective September 5, 2006.
See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

Rewrote (a)4.

Recodified from N.J.A.C. 12A:2-1.14 by 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:2-1.15, Remedies, recodified to N.J.A.C. 12A:2-1.16.

Recodified from N.J.A.C. 12A:2-1.15 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)4, updated the N.J.A.C. reference and inserted a semicolon following "duration"; and in (a)5, substituted "Chief Executive Officer" for "Secretary" and "30-day" for "30 day".

19:31-14.16 Remedies

(a) Upon the occurrence of any event of default as described in N.J.A.C. 19:31-14.15 and the project agreement, the Chief Executive Officer may, so long as such event of default is continuing, do one or more of the following as the Chief Executive Officer in his or her sole discretion shall determine, without limiting any other right or remedy the Chief Executive Officer or the Division of Taxation may have on account of such event of default:

1. The Chief Executive Officer may require the surrender by the business to the Chief Executive Officer of the tax credit certificate for suspension or cancellation; and/or

2. The Chief Executive Officer may exercise any other right or remedy that may be available under applicable law or under the project agreement, including, without limitation:

i. Recapturing all (for example, if a business ceases operations and leaves the State prior to the end of the commitment duration) or a portion of the grant of tax credits by notifying the Director, who shall issue a recapture assessment which shall be based upon the proportionate value of the grant of tax credits that corresponds to the amount and period of noncompliance;

ii. Recovering damages for loss of a bargain for any default during the commitment duration;

iii. Terminating the project agreement; or

iv. Proceeding by appropriate court action (legal or equitable) to enforce the terms of the project agreement.

(b) The rights and remedies of the Chief Executive Officer under this subchapter and the project agreement shall be cumulative and shall not exclude any other rights and remedies of the Chief Executive Officer or the Division of Taxation allowed by law with respect to any event of default under this subchapter of the project agreement.

Recodified from N.J.A.C. 12A:2-1.15 and amended by R.2010 d.178, effective August 16, 2010.

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

In the introductory paragraph of (a), updated the N.J.A.C. reference. Former N.J.A.C. 12A:2-1.16, Appeals, recodified to N.J.A.C. 12A:2-1.17.

Recodified from N.J.A.C. 12A:2-1.16 and amended by R.2010 d.231, effective October 18, 2010.

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

Substituted "Chief Executive Officer" for "Secretary" throughout; and in the introductory paragraph of (a), updated the N.J.A.C. reference.

19:31-14.17 Appeals

(a) The procedure for an appeal of the Chief Executive Officer's action on an application to the program shall be as follows. An applicant may appeal the Chief Executive Officer's action on an application to the program by submitting in writing to the Authority, within 30 days from the date of the Chief Executive Officer's action, an explanation as to how the applicant has met the program criteria. Only the

information that clarifies the application filed shall be reconsidered. In the event the application is reconsidered as eligible for the program, such application shall be presented for action at the next available Board meeting.

(b) In general, appeals arising from decisions of the Chief Executive Officer may be requested in writing, and an opportunity given for an informal hearing on the papers, in person or via telephone with Authority staff. Such written request for any informal hearing must be made within 30 days of the receipt of the Chief Executive Officer's decision.

(c) In the event of an adverse decision after an informal hearing under (b) 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 Chief Executive Officer if any informal hearing is not sought, a formal hearing.

(d) Upon filing of the initial pleading in a contested case, the Chief Executive Officer 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.

(e) Every determination of a dispute or controversy arising from this subchapter by the Authority, constituting final agency action by the Chief Executive Officer, shall be embodied in a written decision that 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. 12A:2-1.16 by 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:2-1.17, Severability, recodified to N.J.A.C. 12A:2-1.18.

Recodified from N.J.A.C. 12A:2-1.17 and amended by R.2010 d.231, effective October 18, 2010.

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

Substituted "Chief Executive Officer's" for "Secretary's", "Chief Executive Officer" for "Secretary", and "Authority" for "Commission" throughout; and in (a), deleted "of Director's" following "Board".

19:31-14.18 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged 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. 12A:2-1.17 by R.2010 d.178, effective August 16, 2010.

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

Recodified from N.J.A.C. 12A:2-1.18 by R.2010 d.231, effective October 18, 2010.

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

SUBCHAPTER 15: TAX CREDIT CERTIFICATE TRANSFER PROGRAM

19:31-15.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1996, c.25, as substantially amended by P.L. 2004, c.65 (the "Act"), and specifically section 17 of the Act (N.J.S.A. 34:1B-120.2). The Act provides several incentive programs aimed at retaining in New Jersey the full-time jobs of businesses already active in this State. The Act established a business retention and relocation assistance grant program, a tax credit certificate transfer program (the "BRRAG Tax Credit Certificate Transfer Program" or "Program"), a sales and use tax exemption program, and an energy sales tax exemption program (for businesses located in New Jersey urban enterprise zones).

(b) The purpose of the BRRAG Tax Credit Certificate Transfer Program is to allow businesses in this State with unused amounts of BRRAG tax credit to surrender those tax credits to other corporations desiring such credits which in exchange will provide private financial assistance to assist in the funding of costs incurred by the relocating business. A BRRAG tax credit may be applied against liability arising in the tax period in which the tax credit is issued and the tax period next following, and shall expire thereafter. However, it is possible that unused credits that remain stranded in the allowable periods may be utilized in the event of future additional liability, like an audit assessment. Therefore, eligibility for this program will require the business to certify that, to the best of its knowledge, it cannot use the tax credits originally issued for the tax periods in which the credits are allowable.

Recodified from N.J.A.C. 12A:2A-1.1 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 "Economic Development Authority" for "Commerce, Economic Growth and Tourism Commission (the 'Commission')" and deleted the last two sentences; and in (b), inserted "BRRAG Tax Credit Certificate Transfer".

19:31-15.2 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 Business Retention and Relocation Assistance Act, P.L. 2004, c.65.

"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 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2004, c.65, §§ 1 through 16 (N.J.S.A. 34:1B-112 through 123).