CHAPTER 31

AUTHORITY ASSISTANCE PROGRAMS

Authority

N.J.S.A. 34:1B-1 et seq.; and P.L. 2004, c. 65, §§ 1 through 17, 19 and 23, P.L. 2005, c. 374, P.L. 2008, c. 112, and P.L. 2008, c. 117.

Source and Effective Date

R.2005 d.274, effective July 22, 2005.
See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 31, Authority Assistance Programs, expires on January 18, 2011. See: 42 N.J.R. 2019(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. 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and Providing for the Financing Thereof through the New Jersey Economic Development Authority, P.L.2001, c.401 were repealed by R.2005 d.274, effective August 15, 2005. See: Source and Effective Date. See, also, section annotations.

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 TABLE OF CONTENTS

New Jersey State Library

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

(d) Tax-exempt bonds are subject to the terms and conditions of the Internal Revenue Codes (IRC); therefore, it is advisable to consult with financial and legal advisors to determine the eligibility of the project.

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

1. Office buildings;
2. Healthcare financings;
3. Warehouses and distribution facilities;
4. Manufacturing projects;
5. Commercial and retail projects;
6. Debt refinancing; and
7. Working capital needs.

Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).
Amended by R.1997 d.270, effective July 7, 1997.
See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).
In (d), deleted last sentence, relating to tax exemptions for interest income.

19:31-1.5 Application procedures

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

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

(c) The Application includes requests for information about:

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

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

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

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

19:31-1.6 Bond counsel review and fees

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

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

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

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

1. Printing fees;

2. Real estate commissions;

3. Consulting fees; and

4. Bond purchaser counsel fees.

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

19:31-1.7 Approval process

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

(b) The following approvals are required:

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

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

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

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

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

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

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

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

3. Approval of the Governor.

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

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

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

19:31-1.8 Attorney General review

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

19:31-1.9 Post-closing review

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

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

SUBCHAPTER 2. LOAN GUARANTEE PROGRAMS

19:31-2.1 Program description

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

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

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

1. Under the Fixed Assets Guarantee program:

i. The Authority may guarantee the lesser of $2.0 million or 90 percent of the principal amount of the financing.

ii. The financing can either be:

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

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

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

building or the renovation of machinery, equipment, and buildings; and

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

2. Under the Working Capital Guarantee program:

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

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

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

3. Under the Special Guarantee program:

i. The Authority may guarantee any amount;

ii. The Authority guarantee shall be of:

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

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

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

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

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

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

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

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

"Base years" means the first two complete calendar years following the approval by the members provided, however, that, at its discretion, an approved applicant may notify the Authority that the base years have terminated prior to such date, and further provided that in those instances where significant construction/renovation of the project requires a certificate of occupancy to be awarded prior to occupancy of the project site, the base years will commence upon the issuance of a certificate of occupancy by the municipality.

"Designated industries" 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 as these terms are more particularly defined in N.J.A.C. 19:31-10.2.

"Disaster recovery center" means a redundant facility used to house back-up systems to be used in the event of a business interruption at the primary facility of the business.

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

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

"Manufacturing business" means a business in which more than 50 percent of the business conducted is the transformation of raw materials into finished goods for sale.

"Net new full-time permanent job" means the full-time permanent jobs created. "Net new full-time permanent job" shall not include any person who was previously employed in New Jersey by the business or by a related person as defined in N.J.S.A. 54:10A-5.5 if the employee is transferred to the business which is the subject of the application unless the employee's position at his or her previous employer is filled by a new employee.

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

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

I. Demonstrate that the project is a designated industry as that term is defined in N.J.A.C. 19:31-10.2; and is located either in a Metropolitan Planning Area (PA 1), Suburban Planning

Area (PA 2), designated center or an area designated for growth in a plan that has been endorsed by the New Jersey State Planning Commission at N.J.S.A. 52:18A-196 et seq.;

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

III. Create a minimum 10 net new full-time permanent jobs for manufacturing businesses and designated industries. For disaster recovery centers which will increase the tax base of the State or any political subdivision of the State, the Authority may waive the requirement for the creation of net new full-time permanent jobs.

IV. For manufacturing businesses and designated industries, demonstrate that the business is making a minimum capital investment in the facility of $10,000,000. For disaster recovery centers, demonstrate that the business is making a minimum capital investment in the facility of $15,000,000.

V. The business is not eligible for assistance under structured finance if the business is eligible for assistance under the Sales Tax Exemption component of the Business Retention and Relocation Assistance Act, P.L. 2004, c. 65, as amended. The business is not eligible for assistance under structured finance if the business has entered into an agreement for a Business Employment Incentive Program Grant at the project site (P.L. 1996, c. 26 as amended).

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

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

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

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

(C) If a firm does not meet their projections for net new full-time permanent jobs, it shall return to the State a proportionate percentage of the sales tax benefit.

(D) Fees are as follows:

I. A non-refundable application fee of $1,000 shall accompany every application for assistance.

II. A closing fee of $25,000 shall be paid to the Authority by the business at the time of closing.

III. A lease origination fee equal to 10 percent of the sales tax benefit shall be paid to the Authority by the business at the lease tranche closing(s), as they occur.

IV. A sales and use tax exemption letter fee of $500.00 per year for each year a letter is issued by the Authority shall be paid to the Authority by the business.

V. An asset re-acquisition fee equal to 10 percent of the residual value of the machinery, equipment, furniture and fixtures shall be paid to the Authority by the business. The residual value will have a floor of one percent of the original purchase price and sales tax allocable to the residual value.

4. Under the Film Production Assistance Program:

i. The Authority may provide guarantees of private loan(s) in eligible film projects. The maximum amount of Authority assistance shall be the lesser of $1.5 million or 30 percent of the private loan(s);

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

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

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

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

iii. The Authority shall provide in any agreement between the Authority and a film production company for

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

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

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

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

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

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

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

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

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

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

(d) Both the Fixed Asset guarantee and the Working Capital guarantee have a maximum term of 10 years for the guarantee, although the financing can be for a longer term. Smart Growth Pre-development guarantees have a maximum term of three years. A Special Guarantee term shall not exceed the term of the financing. Film Production Assistance Program guarantee terms will be determined on a project-by-project basis. Factors to be considered in determining the terms of the guarantee are as set forth in N.J.A.C. 19:31-2.4.

Amended by R.1997 d.270, effective July 7, 1997.
See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).
In (b), substituted "three types" for "two types" and added "and Special Guarantees"; in (b)1ii(1), inserted "Authority issued"; added (b)1ii(2); substantially amended (b)2ii; in (b)iii, substituted "financing proceeds" for "loan proceeds"; inserted (b)3; and in (c), added last sentence.
Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).
Inserted a new (b); recodified former (b) and (c) as (c) and (d); and in the new (c)3, inserted "or locate to another state" following "State" in ii(4)(B), and substituted a reference to companies for a reference to existing New Jersey companies in iii.
Amended by R.2000 d.482, effective December 4, 2000.
See: 32 N.J.R. 3555(a), 32 N.J.R. 4275(b).
Inserted (c)3ii(5).
Amended by R.2001 d.242, effective July 16, 2001.
See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).
In (b), deleted the second sentence; rewrote (c).
Amended by R.2004 d.139, effective April 5, 2004.
See: 36 N.J.R. 143(a), 36 N.J.R. 1787(b).
In (c), rewrote the introductory paragraph and added 4; in (d), added the last sentence.
Amended by R.2004 d.346 and d.347, effective September 20, 2004.
See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a), 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).
Rewrote (c); in (d), added the second sentence.
Amended by R.2005 d.274, effective August 15, 2005.
See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).
Rewrote (c).
Amended by R.2005 d.319, effective September 19, 2005.
See: 37 N.J.R. 2153(a), 37 N.J.R. 3722(a).
In (c), added definitions "Designated industries", "Disaster recovery center", and "Manufacturing business", rewrote definitions "Employment compliance period" and "Net new full-time permanent job", rewrote (A), deleted former (C), recodified and rewrote former (D) as (C), added (D).
Amended by R.2008 d.89, effective April 7, 2008.
See: 39 N.J.R. 5071(a), 40 N.J.R. 1927(b).
In (c)2i, substituted "$1.5 million" for "$1 million".
Amended by R.2009 d.38, effective January 20, 2009.
See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).
Deleted (c)6.

19:31-2.2 Eligibility standards

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

1. Are job intensive;

2. Will create or maintain tax ratables;

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

4. Represent an important economic sector of the State.

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

19:31-2.3 Application procedures

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

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

(c) A completed Application includes:

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

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

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

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

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

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

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

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

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

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts receivable;

3. Aging of accounts payable; and/or

4. Any additional information deemed necessary to evaluate the Application.

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

1. A copy of the completion bond;

2. Copies of distribution agreements, as may be available, with major intended markets specified, and details including, but not limited to, companies, territories, and/or countries involved, and duration of exhibition in all major intended markets;

3. Specifics on target audience(s) for film project;

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

5. A complete breakdown of the film project budget;

6. A copy of the proposed shooting schedule, including dates and locations;

7. A copy of the screenplay and brief treatment of the film project, specifying chain of title and/or assignment of rights to literary property;

8. The location of production office; and

9. Proof of liability insurance in an amount acceptable to the Authority.

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

Amended by R.2004 d.139, effective April 5, 2004.
See: 36 N.J.R. 143(a), 36 N.J.R. 1787(b).
Added a new (e) and recodified former (e) as (f).

19:31-2.4 Evaluation process

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

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;

2. An analysis of historic and projected financial statements and a comparison to industry peers;

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

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

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

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

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

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

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

Amended by R.2004 d.139, effective April 5, 2004.
See: 36 N.J.R. 143(a), 36 N.J.R. 1787(b).
Added (a)9.

19:31-2.5 Approval process

(a) Only the Members can approve a guarantee, either directly or through delegation.

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

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

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

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

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

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

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

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

Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).
Amended by R.2005 d.274, effective August 15, 2005.
See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).
Rewrote (a) and (d).
Amended by R.2009 d.38, effective January 20, 2009.
See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).
In (d)2 and (d)3, deleted "Angel Investor Program guarantee and the" preceding "Structured".

19:31-2.6 Attorney General review

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

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

SUBCHAPTER 3. DIRECT LOAN PROGRAM

19:31-3.1 Program description

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

(b) Except as otherwise provided in this subsection, direct loans are available in a maximum amount of $1,250,000 for fixed asset financing and $750,000 for working capital.

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

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

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

4. The maximum amount of total financing for the New Jersey Growth Fund Program shall be $1 million per transaction.

5. For the urban loan product, the maximum loan amount will be $3 million, not to exceed 50 percent of the total project costs, for those projects wherein the tenant or owner will provide from non-Authority sources a capital investment of under $70 million; and $5 million for those projects wherein the tenant or owner will provide from

non-Authority sources a capital investment of over $70 million.

6. For companies awarded financing under the Edison Innovation R&D Fund by the New Jersey Commission on Science and Technology (NJCST), the Authority may award up to 20 percent of the approved NJCST grant, not to exceed $100,000 in convertible debt financing for non-research and development related costs.

7. For the Loans to Lenders component of the Fund for Community Economic Development, the maximum loan amount will not exceed $500,000, except that Loans to Lenders may be used to develop grocery stores and supermarkets with a maximum loan amount of $3 million, provided that no more than $4 million will be used for this purpose. For the pre-development assistance component of the Fund for Community Economic Development, the maximum loan amount will not exceed $50,000 per project.

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

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

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

(f) Proceeds of Brownfield Redevelopment loans shall be used for financing those remediation costs deemed eligible by the New Jersey Department of Environmental Protection pursuant to the Municipal Landfill Site Closure, Remediation and Redevelopment Agreement that has been entered into by the applicant with the New Jersey Department(s) of Environmental Protection and Treasury, and the New Jersey Commerce and Economic Growth Commission.

(g) Proceeds of urban loans shall be used for fixed asset financing as set forth in (c) above, not to exceed 50 percent of total project costs, in the nine urban centers designated in the New Jersey State Development and Redevelopment Plan (Atlantic City, Camden, East Orange, Elizabeth, Jersey City, New Brunswick, Newark, Paterson and Trenton).

(h) The Authority shall determine the term, and fixed and/or variable rates of interest, including interest rate floors, to be charged for each loan product through consideration and official action of the Members at a public hearing. The applicant shall elect in writing, at or prior to the time of closing, a fixed interest rate or at a variable interest rate.

1. Fixed Rate Interest:

i. Interest on fixed asset or working capital loans will be fixed at the time of closing, with a floor that shall be indexed to a nationally recognized financial index, such as the five-year United States Treasury Bond of like term, plus or minus any additional basis points to be determined by the Authority. During the term of any loan, a scheduled rate reset shall not result in an increase of more than five percentage points greater than the original calculated interest rate.

ii. The amount of interest to be charged on the convertible debt portion of the Edison Innovation R&D Fund shall be capitalized during the first five years of the financing, during which time no principal or interest payments are required. The principal and capitalized interest shall be automatically converted into equity in the event that a qualified financing in the minimum amount of $500,000 shall occur during such five-year period. If no such qualified financing shall occur during that time, the principal and capitalized interest shall be amortized over the next five-year period and shall be payable monthly, with interest.

2. Variable Rate Interest: Interest on fixed asset and working capital loans will be set with a floor that shall be indexed to a nationally recognized rate, such as the Prime Rate as published in the Wall Street Journal at the time of closing, plus or minus any basis points to be determined by the Authority. The interest rate will be variable, adjusted on the first business day of each calendar quarter in accordance with the relationship of the original calculated interest rate. The maximum increase in the variable interest rate during the term of the loan will be no more than five percentage points greater than the original calculated interest rate.

3. For fixed and variable rate loans, factors to be considered in establishing additional interest rate basis points above the floor previously established by the Board may include, among others:

i. An applicant's creditworthiness;

ii. Amortization schedules;

iii. The quality of collateral;

iv. The number of jobs maintained or expanded in New Jersey;

v. The location/municipality of project;

vi. The industry type;

vii. The increase in tax ratable values;

viii. Leveraging of total project costs to public dollars;

ix. Whether the business is new to the State or expanding operation in the State; and

x. Whether the applicant is locating to a former brownfield site.

4. For loans offered under the Edison Innovation Fund, the criteria for determining the rate of interest and additional basis points above the floor previously established by the Board may include the eligibility standards contained in N.J.A.C. 19:31-3.2(f).

5. In addition to any interest charged on an Edison Innovation R&D Fund loan, the Authority may also require the payment of additional fees and charges, including, but not limited to, warrants, stock, stock options, a percentage of royalties, and a percentage of sales proceeds.

6. The Authority shall provide public notice of the loan terms and interest rates, including interest rate floors, to be charged for all loan products as authorized by the Members through, among other methods, listing on the agency's website at www.njeda.com.

(i) The Authority may make direct loans in excess of $1,250,000 and up to $2 million for fixed assets. An applicant for a direct loan in excess of $1,250,000 shall:

1. Be in an industry or municipality that is targeted by the Authority as set forth in N.J.A.C. 19:30-5 or located in the Port District;

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

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

(j) Notwithstanding (i) above, an existing New Jersey company that is not targeted by the Authority as set forth in N.J.A.C. 19:30-5, but can meet the criteria set forth in (i)2 above shall be eligible for a direct loan in excess of $1,250,000 if it can demonstrate that at least 400 permanent full-time jobs shall be maintained in New Jersey and the Authority's exposure shall not exceed $50,000 per job maintained.

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

(*l*) For New Markets Loans:

1. The maximum amount of total financing for a New Markets loan is $10 million, except for projects that provide extraordinary economic development benefits when the maximum amount of total financing for a New Markets loan is $25 million.

2. For New Market Loans, the projects must be located within areas designated for smart growth land use development and designated by the New Jersey Development and Redevelopment Plan as in Planning Areas One or Two or in a designated center or endorsed plan. Additionally, projects must be located in communities and census tracts as approved by the Community Development Financial Institutions Fund (CDFI) as described in (*l*)2i through iii below and must have at least one of the characteristics described in (*l*)3 below.

i. A poverty rate of at least 20 percent;

ii. In the case of a tract not located within a Metropolitan area as defined by the United States Census, where the median income family income for such tract does not exceed 80 percent of the Statewide median family income; or

iii. In the case of a tract located within a Metropolitan area, where the median family income for such tract does not exceed 80 percent of the greater of Statewide median income or the Metropolitan area median family income.

3. Additionally, New Markets loans must be located in at least one of the following types of designated areas:

i. CDFI Hot Zone, Empowerment Zone, Renewal Community, HOPE VI Redevelopment area or Small Business Administration HUB Zone;

ii. A brownfield redevelopment area, locally designated redevelopment area, or New Jersey Urban Enterprise Zone;

iii. A census tract with an unemployment rate of 1.5 times the national average; or

iv. A census area with a poverty rate greater than 30 percent or with median incomes of less than 60 percent of the area median income.

4. In addition to any interest charges on a New Markets loan, the Authority shall also require the payment of additional fees, including a one-time monitoring fee of $1,000 and a management fee of five percent of the loan amount, with the exception of non-profit borrowers that will be charged a 3.5 percent management fee.

Amended by R.1992 d.126, effective March 16, 1992.
See: 24 N.J.R. 177(b), 24 N.J.R. 970(b).
Revised (e).
Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).
Amended by R.1997 d.270, effective July 7, 1997.
See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).
Added (g) through (i).
Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).
In (g)1, substituted "or" for "and" following "industry".
Amended by R.2001 d.242, effective July 16, 2001.
See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).
In (b), substituted "$750,000" for "$500,000" and "$500,000" for "$250,000"; in (g) and (h), substituted "$750,000" for "$500,000".
Amended by R.2002 d.223, effective July 15, 2002.
See: 34 N.J.R. 1247(a), 34 N.J.R. 2469(a).
Rewrote (e).

Amended by R.2002 d.333, effective October 7, 2002.
See: 34 N.J.R. 2412(a), 34 N.J.R. 3531(a).
Rewrote (e).
Amended by R.2004 d.94, effective March 1, 2004.
See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).
Rewrote (e).
Amended by R.2004 d.346, effective September 20, 2004.
See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a).
Rewrote the section.
Amended by R.2005 d.274, effective August 15, 2005.
See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).
In (b), added 4; rewrote (g) and (h).
Amended by R.2005 d.319, effective September 19, 2005.
See: 37 N.J.R. 2153(a), 37 N.J.R. 3722(a).
In (b), added 4; in (g)1 added iv.
Amended by R.2006 d.242, effective July 3, 2006.
See: 38 N.J.R. 1563(a), 38 N.J.R. 2887(c).
Inserted "at least the first seven years of" in (g)1iv.
Amended by R.2006 d.369, effective October 16, 2006.
See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).
Deleted (b)5 and (g)1iv; deleted the last sentence of (h); and added (*l*).
Amended by R.2008 d.89, effective April 7, 2008.
See: 39 N.J.R. 5071(a), 40 N.J.R. 1927(b).
In the introductory paragraph of (b), substituted "$1,250,000" for "$750,000" and "$750,000" for "$500,000"; in the introductory paragraph of (i), substituted "$1,250,000" for "$750,000" twice; and in (j), substituted "$1,250,000" for "$750,000".
Amended by R.2008 d.90, effective April 7, 2008.
See: 40 N.J.R. 110(a), 40 N.J.R. 1928(a).
Added (b)5 and (b)6; added new (g); recodified former (g) through (*l*) as (h) through (m); in the introductory paragraph of (h), substituted "(h)1" for "(g)1" and "(h)2" for "(g)2"; added (h)1iv and (h)1v; in (h)2, substituted "(h)1" for "(g)1"; in (h)3, inserted "or Edison Innovation R&D Fund" and "and incentives"; in (i), substituted "amortization may be" for "repayment schedule is usually" and "longer" for "shorter", and inserted "the use of proceeds and"; in (k), substituted "(j)" for "(i)" and "(j)2" for "(i)2"; in (*l*), substituted "(j) and (k)" for "(i) and (j)"; and in the introductory paragraph of (m)4, substituted "(m)4i" for "(*l*)4i" and "(m)5" for "(*l*)5".
Amended by R.2008 d.271, effective September 15, 2008.
See: 40 N.J.R. 2659(a), 40 N.J.R. 5247(a).
Rewrote (h); deleted former (i); recodified former (j) through (m) as (i) through (*l*); in (j), substituted "(i)" for "(j)" and "(i)2" for "(j)2"; in (k), substituted "(i) and (j)" for "(j) and (k)"; deleted (*l*)2 and (*l*)3 and recodified former (*l*)4 through (*l*)6 as (*l*)2 through (*l*)4; in the introductory paragraph of (*l*)2, substituted "Loans" for "loans", "in" for "is" following "Two or", "tracts" for "tracks", "(*l*)2i" for "(m)4i" and "(*l*)3" for "(m)5".
Amended by R.2008 d.294, effective October 6, 2008.
See: 40 N.J.R. 3980(a), 40 N.J.R. 5845(c).
Rewrote (b)5.
Amended by R.2009 d.139, effective April 20, 2009.
See: 41 N.J.R. 394(a), 41 N.J.R. 1891(a).
Added (b)7.
Amended by R.2010 d.178, effective August 16, 2010.
See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).
Added new (h)3ii; and recodified former (h)3ii through (h)3ix as (h)3iii through (h)3x.

19:31-3.2 Eligibility standards

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

1. Are job intensive;

2. Will create or maintain tax ratables;

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

4. Represent an important economic sector of the State.

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

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

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

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

(f) For Edison Innovation Fund loans, projects will be considered eligible if they have the following characteristics:

1. Technology that has a strong likelihood and clear timeline to achieve commercialization;

2. A meaningful and defined market and customer base for the technology;

3. A management team possessing appropriate skill sets, capacity and financial resources and willingness to strengthen management through other means such as advisory or consultant services;

4. A meaningful customer base, partners, strategic alliances and professional relationships;

5. An ability to leverage the Authority's resources by evidence of other fund raising and need for future capital requirements;

6. A clear record of specific operational and research milestones achieved to date and proposed schedule and means to achieve future milestones;

7. A current and complete business plan including a detailed financial model; and

8. Location of the business in either an Innovation Zone, Urban Enterprise Zone or area targeted for smart growth redevelopment as determined by the New Jersey Development and Redevelopment Plan; or

9. A Business that is located in a targeted industry.

Amended by R.2004 d.346, effective September 20, 2004.
See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a).
Added (d) and (e).
Amended by R.2005 d.274, effective August 15, 2005.
See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).
In (e) substituted "," for "and" following "Commerce", added "and Tourism" following "Growth"; added (f).
Amended by R.2005 d.319, effective September 19, 2005.
See: 37 N.J.R. 2153(a), 37 N.J.R. 3722(a).
Added (g) and (h).

Amended by R.2006 d.369, effective October 16, 2006.
See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).
Deleted (g) and (h).
Amended by R.2008 d.271, effective September 15, 2008.
See: 40 N.J.R. 2659(a), 40 N.J.R. 5247(a).
In the introductory paragraph of (f), substituted "Edison Innovation" for "New Jersey Growth".

19:31-3.3 Application procedures

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

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

(c) A completed Application includes:

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

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

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

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

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

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

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

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

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts receivable;

3. Aging of accounts payable; and/or

4. Any additional information deemed necessary to evaluate the Application.

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

19:31-3.4 Evaluation process

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

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;

2. An analysis of historic and projected financial statements and a comparison to industry peers;

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

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

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

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

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

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

19:31-3.5 Approval process

(a) Only the Members can approve a direct loan, either directly or through delegation.

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

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

(d) If there has been no veto, a formal commitment letter is issued to the applicant.

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

2. With the exception of the New Jersey Growth Fund and the Edison Innovation R&D Fund, usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as a collateral assignee.

3. With the exception of the New Jersey Growth Fund and the Edison Innovation R&D Fund, personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

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

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

Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).
Amended by R.2005 d.274, effective August 15, 2005.
See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).
Rewrote (a) and (d)2 and 3.
Amended by R.2008 d.90, effective April 7, 2008.
See: 40 N.J.R. 110(a), 40 N.J.R. 1928(a).
In (d)2 and (d)3, inserted "and the Edison Innovation R&D Fund".

19:31-3.6 Attorney General review

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

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

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. INVESTNJ BUSINESS GRANT PROGRAM

19:31-5.1 Applicability and scope

The New Jersey Economic Development Authority is promulgating these rules to implement the InvestNJ Business Grant Program Act, P.L. 2008, c. 112 (the "Act"). The Act established the InvestNJ Business Grant Program to provide capital investment and job creation grants to qualifying businesses during the current national economic crisis.

19:31-5.2 Definitions

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

"Authority" means the New Jersey Economic Development Authority.

"Business" means any entity including, but not limited to, a corporation, an S corporation, limited liability corporation, partnership, limited liability partnership, and sole proprietorship, and shall include all entities related by common ownership or control. For purposes of this definition, common control shall mean possessing or being subject to the power, direct or indirect, to direct or cause the direction of the management and policies of entity, whether through the ownership of voting stock, by contract or otherwise. A beneficial ownership of 50 percent or more of the voting power of an entity shall create a presumption of control of that entity. For purposes of this definition, common ownership shall mean ownership of at least 50 percent of the voting power of an entity.

"Capital investment" means expenses of at least $5,000 incurred for the direct use and operation of a business for:

1. 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; and

2. Obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure, or facility.

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 section, 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). "Capital investment" shall also include remediation of a business facility site, but only to the extent the remediation has not received financial assistance from another Federal, State, or local government funding source. If a construction permit was received prior to December 9, 2008 relating to the phase of a project that will include a capital investment, such capital investment shall not be included in this definition. A capital investment that was ordered prior to December 9, 2008 also shall not be included in this definition.

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

"Eligible position" means a full-time position filled by an individual 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 a person who is co-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. An eligible position shall include only a position for which a business provides, directly or pursuant to an employee leasing agreement, 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. An eligible position shall not include an independent contractor or a consultant.

19:31-5.3 Grant components and amounts

(a) The investment grant component shall provide an incentive to businesses to encourage capital investments by the award of grants of up to seven percent of the qualifying capital investment made by a business in New Jersey, as follows:

1. The value of the grant shall be seven percent of the capital investment provided that no grantee shall receive more than $1 million; and

2. The sum of investment grants awarded shall not exceed $70 million, which not more than $20 million shall be allocated for capital investment grants described under paragraph 2 of "capital investment" as defined in N.J.A.C. 19:31-5.2.

(b) The employment grant component shall provide an incentive to businesses to create full-time eligible positions that are retained for at least one year by the grantee, as follows:

1. The value of the grant shall be $3,000 to qualified businesses for each eligible position created, provided that no grantee shall receive more than $500,000; and

2. The sum of employment grants awarded shall not exceed $50 million.

19:31-5.4 Eligibility criteria

(a) A business shall be eligible for the issuance of an investment grant if it:

1. Has operated continuously for at least the two years preceding the filing of an application for a grant;

2. Employs at least five full-time employees; and

3. Makes a capital investment in New Jersey after December 9, 2008 but prior to January 1, 2011.

(b) A business shall be eligible for the issuance of an employment grant if it:

1. Has operated continuously in this State for at least the two years preceding the filing of an application for a grant;

2. Employs at least five full-time employees;

3. Adds an eligible position created in New Jersey after December 1, 2008 and before January 1, 2011, for a period of at least 12 consecutive months in this State; and

4. Has experienced a net increase in employment of eligible positions in this State during the same 12 consecutive months.

19:31-5.5 Application requirements

(a) A business seeking to participate in the investment grant component or in the employment grant component shall submit an application prior to January 1, 2011. Applications shall be posted on the EDA's website at www.njeda.com.

(b) The Chief Executive Officer shall review and may approve an application for the investment grant and issue payment of the grant amount pursuant to a series of scheduled payments as determined by the Chief Executive Officer and subject to the submission of proof by an approved applicant of the expenditures contributing to the capital investment. Grants will be made in the order in which completed disbursement requests are received and approved; and approvals will be subject to the limits set forth at N.J.A.C. 19:31-5.3(a)2 and subject to appropriation and the availability of funds.

(c) The Chief Executive Officer shall review and may approve an application for the employment grant and issue payment of the grant upon the submission of proof by an approved applicant of the employment of an individual in the eligible position during a period of at least 12 consecutive months in this State and proof of the other requirements set forth in N.J.A.C. 19:31-5.4(b). Such submission shall be subject to review and audit by the Department of Labor and Workforce Development. Grants will be made in the order in which completed disbursement requests are received and approved; and approvals will be subject to the limits set forth at N.J.A.C. 19:31-5.3(b)2 and subject to appropriation and the availability of funds.

19:31-5.6 Application procedures and disbursement process

(a) To apply, the applicant should complete the InvestNJ application and submit it to the Authority for review.

(b) A completed application includes:

1. The company's name, address and year established;

2. The number of existing full time employees;

3. The estimated number of eligible positions to be created (for job creation grant request);

4. A brief description of capital investment (for capital investment grant request) and a proposed line item budget for improvements to be made at site as well as a certification that business has not received a construction permit or ordered equipment after December 9, 2008; and

5. At the request of the Authority, any additional information deemed necessary to evaluate the application.

(c) Upon receipt of a completed application, the business will receive notification that the application has been received.

(d) For disbursement of job creation grants, funds may be provided after eligible positions have been sustained for a 12-month period. Companies will be required to:

1. Evidence that the position(s) has been maintained for a 12-month period;

2. Provide a copy of the original application;

3. Evidence that the positions were covered under a group health plan;

4. Complete a tax clearance certificate application and questionnaire to identify any pending legal matters; and

5. Evidence fulfillment of prevailing wage or affirmative action requirements, if applicable.

(e) For disbursement of capital investment grants, companies will be required to:

1. Provide those items at (d)2 through 5 above; and

2. Provide invoices for the capital investment expenses incurred.

(f) Once the items required in (d) and (e) above are received and reviewed by staff for completeness and eligibility, staff may make a recommendation to the Chief Executive Officer for approval. Upon approval, a grant agreement detailing the terms of the grant and any compliance requirements will be sent to the company. Upon execution of the grant agreement, the company may request disbursement and a check will be mailed to the company for the approved amount of the grant.

19:31-5.7 Restrictions

(a) For the purpose of determining eligibility for an investment grant pursuant to N.J.A.C. 19:31-5.3(a), the authority shall exclude any expenses incurred at a site for which the business is receiving a Business Employment Incentive Program grant pursuant to the provisions of P.L. 1996, c. 26 (N.J.S.A. 34:1B-124 et seq.), a Business Retention and Relocation Assistance Grant pursuant to P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.) or an Urban Transit Hub Tax Credit pursuant to P.L. 2007, c. 346 (N.J.S.A. 34:1B-207 et seq.), and shall exclude any expenses covered by a retail sales purchase exemption pursuant to section 20 of P.L. 1983, c. 303 (N.J.S.A. 52:27H-79), section 25 of P.L. 1980, c. 105 (N.J.S.A. 54:32B-8.13), section 26 of P.L. 1980, c. 105 (N.J.S.A. 54:32B-8.14), section 28 of P.L. 1980, c. 105 (N.J.S.A. 54:32B-8.16), section 41 of P.L. 1980, c. 105 (N.J.S.A. 54:32B-8.29), section 45 of P.L. 1980, c. 105 (N.J.S.A. 54:32B-8.33), or section 11 of P.L. 1981, c. 546 (N.J.S.A. 54:32B-8.36).

(b) For the purpose of determining eligibility for an employment grant pursuant to N.J.A.C. 19:31-5.3(b), the authority shall not include any position that is included in the calculation of a Business Employment Incentive Program grant pursuant to the provisions of P.L. 1996, c. 26 (N.J.S.A. 34:1B-124 et seq.), a Business Retention and Relocation Assistance Grant pursuant to P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.) or an Urban Transit Hub Tax Credit pursuant to P.L. 2007, c. 346 (N.J.S.A. 34:1B-207 et seq.).

19:31-5.8 Affirmative action and prevailing wage

(a) The Authority's prevailing wage requirements P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) will apply to both components of the InvestNJ Business Grant Program.

(b) The Authority's affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), will apply to both components of the InvestNJ Business Grant Program as follows:

1. In all instances where an eligible investment or employment grant results in a grantee/applicant entering into a construction contract, the grantee/applicant shall be required to track employment of minority and women workers and shall be responsible for the performance of their contractors and subcontractors under this section. Notwithstanding the provisions set forth at N.J.A.C. 19:30-3.4, applicable grantee/applicants shall not be required to submit monthly project workforce reports to the Authority; however, the grantee/applicant's contractors and subcontractors shall preserve all project workforce records for two years from the completion date of the project and must permit the Authority (or its designated agent) and the grantee/applicant complete access to all such records. Grantee/applicants must certify with each Authority disbursement request that all required project workforce records are up to date and on file.

2. In the event a construction contract has been executed between the grantee/applicant and its contractor before the grantee/applicant has applied to the Authority for assistance under this program, the Authority will not require the construction contract to be amended to include the InvestNJ Addendum to Construction Contract available on the EDA's website at www.njeda.com/affirmativeaction/investnj, provided the grantee/applicant and the contractor execute a side-letter agreement stating that the contractor agrees, and will cause its subcontractors to agree to the following:

i. That it will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;

ii. That it will pay prevailing wage;

iii. That it will prepare and preserve accurate payroll and project workforce records; and

iv. That it will adhere to the Authority's affirmative action regulations contained in N.J.A.C. 19:30-4, except as amended in this subsection.

3. The 10 percent retainage requirement, as required in N.J.A.C. 19:30-3.5, shall not be required for any InvestNJ Addendum to Construction Contract or side-letter agreement. Final approval and disbursement of grant funds will be made upon the issuance of a written notice by the Authority's Office of Affirmative Action that it has received all documentation required hereunder and under the Authority affirmative action regulations except as modified in this subsection, and has determined that based on such documentation, the grantee/applicant is in compliance with the requirements of the program.

4. A summary of the compliance requirements concerning affirmative action under this program can be found on the Authority's Internet webpage at: www.njeda.com/affirmativeaction/investnj.

Amended by R.2009 d.181, effective June 1, 2009.
See: 41 N.J.R. 1103(a), 41 N.J.R. 2338(a).
Inserted designation (a); in (a), deleted "affirmative action requirements P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and" following "Authority's"; and added (b).

19:31-5.9 Forfeiture and repayment of grants

A grantee of the investment grant that fails to comply with a grant agreement, which shall include a requirement that the capital investment be maintained in New Jersey for not less than a year, shall repay any grant amount received and, if so determined by the Chief Executive Officer, shall pay a penalty not in excess of 10 percent of the grant amount.

SUBCHAPTER 6. MAIN STREET BUSINESS ASSISTANCE PROGRAM

19:31-6.1 Applicability and scope

The New Jersey Economic Development Authority is promulgating these rules to implement the Main Street Business Assistance Program Act, P.L. 2008, c. 117 (the "Act"). The Act established the Main Street Business Assistance Program to provide guarantees and loans to small and mid-size businesses and not-for-profit organizations on an expedited basis for a period not to exceed two years from the date of enactment to stimulate the economy.

19:31-6.2 Terms of financial assistance

(a) Under the Main Street Business Assistance Program, the Authority may provide direct loan, loan participation and/or guarantee products and line of credit guarantee products.

1. For the direct loan and loan participation product, the maximum amount will be $1 million per total transaction for fixed assets and $750,000 per transaction for working capital, not to exceed 25 percent of total transaction;

2. For the loan guarantee product, the maximum guarantee will be $2 million per transaction for fixed assets and $1.5 million per transaction for working capital, not to exceed 50 percent of total transaction; and

3. For the line of credit product, the maximum amount will be $250,000, not to exceed 50 percent of the total transaction.

(b) The combination of direct loan, loan participation, loan guarantee and line of credit guarantee shall not exceed the lesser of $2 million or 50 percent of total bank commitment.

(c) The Authority shall provide public notice of the rate of interest to be charged for the Main Street Business Assistance Program as authorized by the Members through, among other methods, listing on the agency's website at www.njeda.com.

(d) For purposes of (a)1 and 2 above, the term shall not exceed five years; and for (a)3 above, the term shall be up to two years based on the term of bank line of credit.

19:31-6.3 Eligibility criteria

(a) Under the Main Street Business Assistance Program, preference for assistance will be given to:

1. A business which has operated continuously for at least the two years preceding the filing of an application; and

2. A project which may:

i. Maintain employment;

ii. Create or maintain tax ratables;

iii. Be located in an economically distressed area; or

iv. Represent an important economic sector of the State.

19:31-6.4 Application requirements

(a) A business seeking to participate in the direct loan, loan participation and guarantee and line of credit products shall comply with the Authority's application procedures as set forth in N.J.A.C. 19:31-2.3.

(b) Authority staff will undertake the evaluation process set forth at N.J.A.C. 19:31-2.4. The Chief Executive Officer shall review and may approve applications, which will be processed in the order in which completed applications are received.

19:31-6.5 Affirmative action and prevailing wage

The Authority's affirmative action requirements P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and prevailing wage requirements P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) will apply to projects undertaken in connection with financial assistance received under the Main Street Business Assistance Program.

SUBCHAPTER 7. LOCAL DEVELOPMENT FINANCING FUND

19:31-7.1 Applicability and scope

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

19:31-7.2 Definitions

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

"Act" means the New Jersey Local Development Financing Fund Act (P.L. 1983, c.190) as amended and supplemented.

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

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

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

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

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

4. The cost of development or redevelopment, including:

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

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

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

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

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

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

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

i. Administrative, appraisal and economic analysis;

ii. Engineering service;

iii. Planning service;

iv. Design service;

v. Architectural service;

vi. Surveying service; and

vii. Other professional service.

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

"Fund" means the Local Development Financing Fund.

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

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

"Sponsor" means the governing body of a municipality or, with the approval of the government of the municipality, a

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

Amended by R.2005 d.274, effective August 15, 2005.
See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).
In "Sponsor" definition, added "(established pursuant to N.J.S.A. 40:68A-29)", and deleted "(see N.J.S.A. 40:68A-29)".

19:31-7.3 Application for financial assistance

(a) Each application for financial assistance from the Fund shall be accompanied by a non-refundable application fee of $1,000. A non-refundable commitment fee of .875 percent of the loan amount is charged with the acceptance by an applicant of a direct loan commitment under the Local Development Financing Fund. The fee to be paid at closing is .875 percent of the loan amount.

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

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

1. The number of permanent jobs to be created in the municipality in which the project is located, excluding the period of construction or development;

2. The number of jobs preserved by the completion of the project in the case of an existing enterprise;

3. The increase in the valuation of real property in the municipality as a result of the completion of the project;

4. Whether the project will result in the maintenance or provision of at least the same number of housing units at comparable rates as exists prior to the undertaking of the project;

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

6. The extent to which the project will contribute to an economic revitalization of the municipality and/or the region;

7. The extent to which the project will advance State and/or regional planning and development strategies; and

8. The extent to which the location of the project is accessible to and promotes the use of public transportation.

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

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

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

Amended by R.2009 d.38, effective January 20, 2009.
See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).
In (a), substituted "$1,000" for "$500.00", and inserted the last two sentences.

19:31-7.4 Financial assistance

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

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

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

1. Conventional private sector mortgages;

2. Purchase money mortgages;

3. Industrial Revenue Bonds;

4. Leases;

5. Loans guaranteed by the Federal Small Business Administration, or similar loan guarantees of other governmental and/or quasi-governmental entities; and

6. Equity investments in the project.

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

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

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

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

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

19:31-7.5 Terms of financial assistance

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

(b) The Authority shall determine the term and the interest rate to be charged on a loan from the fund through consideration and official action of the Members at a public hearing.

(c) Factors to be considered in establishing additional interest rate basis points above the floor previously established by the Board may include, among others:

1. The applicant's creditworthiness;

2. The quality of collateral;

3. The number of jobs maintained or expanded in New Jersey;

4. The location/municipality of project;

5. The industry type;

6. The increase in tax ratable values;

7. Leveraging of total project costs to public dollars;

8. Whether the business is new to the State or expanding operation in the State; and

9. Whether the applicant is locating to a former brownfield site.

(d) The Authority shall provide public notice of the loan term and interest rate, including the interest rate floor, to be charged for the Local Development Financing Fund as authorized by the Members through, among other methods, listing on the agency's website at www.njeda.com.

Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).
Amended by R.2002 d.223, effective July 15, 2002.
See: 34 N.J.R. 1247(a), 34 N.J.R. 2469(a).
In (c), substituted "three for "five".
Amended by R.2002 d.333, effective October 7, 2002.
See: 34 N.J.R. 2412(a), 34 N.J.R. 3531(a).
In (c), substituted "approval," for "closing" following "time of loan".
Amended by R.2004 d.346, effective September 20, 2004.
See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a).
In (c), substituted "closing" for "approval".
Amended by R.2008 d.271, effective September 15, 2008.
See: 40 N.J.R. 2659(a), 40 N.J.R. 5247(a).
Rewrote (b) and (c); and added (d).

19:31-7.6 Evaluation of applications

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

1. The number of unemployed persons in the municipality in which the project is located;

2. The number of permanent full-time jobs to be created and/or maintained directly by the project, excluding the period of construction or development;

3. The number of jobs preserved by the completion of the project for an existing enterprise that otherwise would leave the State;

4. The increase in the valuation of real property in the municipality as a result of the completion of the project;

5. The percentage of the total eligible project costs to be financed from private and/or other public sources;

6. Whether the project results in the maintenance or provision of at least the same number of housing units at comparable rates that exist prior to the undertaking of the project within the municipality or surrounding area;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 8. HAZARDOUS DISCHARGE SITE REMEDIATION FUND

19:31-8.1 Applicability and scope

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

19:31-8.2 Definitions

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

"Act" means P.L. 1993, c. 139, as amended and supplemented.

"Applicant" means a municipality, county, redevelopment entity, company, firm, non-profit organization, an individual, corporation, partnership, or other private business entity which has been determined by the Department to be eligible for financial assistance or a grant under the Fund.

"Authority" means the New Jersey Economic Development Authority.

"Brownfield development area" means an area that has been so designated by the Department, in writing, pursuant to Section 7 of P.L. 1993, c. 139 as amended.

"Brownfield site" means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.

"Department" means the Department of Environmental Protection.

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

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

"Financial assistance" means loans and loan guarantees.

"Fund" means the Hazardous Discharge Site Remediation Fund.

"Innocent party" means a person who:

1. Acquired the real property prior to December 31, 1983 and continues to own the real property at least until the Authority renders final approval to the grant;

2. Demonstrates that the hazardous substance or hazardous waste that was discharged at the real property was not used by that person, or by any person that had permission to use the site from the applicant; and

3. Certifies that the applicant or any person that had permission to use the site from the applicant did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered.

"Members" means the members of the Authority.

"Non-profit organizations" mean 501(c)3 corporations pursuant to Section 501(c)3 of the Federal Internal Revenue Code, 26 U.S.C. §501(c)3, that are exempt from taxation pursuant to section 501(a) of the Federal Internal Revenue Code, 26 U.S.C. §501(a).

"Person" means any individual, corporation, company, partnership, firm, or other private business entity and shall not include non-profit organizations.

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

"Public entities" means municipalities, counties and, as defined in this section, redevelopment entities.

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

"Recreation and conservation purposes" means the use of lands for beaches, biological or ecological study, boating, camping, fishing, forests, greenways, hunting, natural areas, parks, playgrounds, protecting historic properties, water reserves, watershed protection, wildlife preserves, active sports, or a similar use for either public outdoor recreation or conservation or natural resources, or both.

"Redevelopment entity" means any redevelopment entity authorized to exercise government powers pursuant to section 4 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-4).

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

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

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

Amended by R.1994 d.375, effective July 18, 1994.
See: 26 N.J.R. 1612(b), 26 N.J.R. 2918(a).
Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).
Rewrote "Applicant"; and inserted "Municipal governmental entity", "NJRA" and "Qualifying person".
Amended by R.2006 d.369, effective October 16, 2006.
See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).
In definition "Act", inserted ", as amended and supplemented"; in definition "Applicant", substituted "municipality, county, redevelopment entity, company, firm, non-profit organization" for "municipal governmental entity, the New Jersey Redevelopment Authority"; added definitions "Brownfield development area", "Brownfield site", "Non-profit organizations", "Public entities", "Redevelopment entity" and "Recreation and conservation purposes"; in definition "Department", deleted "and Energy" from the end; rewrote definitions "Innocent Party" and "Person"; and deleted definitions "Municipal governmental entity" and "NJRA".

19:31-8.3 Eligibility

(a) Financial assistance from the Fund may be made for eligible projects to public entities for:

1. Implementation of remedial action on contaminated real property; and

2. Remediation on contaminated sites, or on sites at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and such discharge poses or would pose in imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area.

(b) Grants from the Fund may be made for eligible projects to public entities for:

1. Preliminary assessment, site investigation, or remedial investigation of a contaminated site;

2. Matching grants of up to 75 percent of the costs of remedial action on contaminated real property to be used for recreation and conservation purposes, provided that such use is included in the comprehensive plan for the development or redevelopment of the real property and a permanent restriction regarding development and preserving such use is recorded and indexed with the deed in the registry of deeds for the county in which the real property is located;

3. Matching grants of up to 50 percent of the costs of remedial action on contaminated real property to be used for affordable housing pursuant to N.J.S.A. 52:27D-301 et seq.;

4. Matching grants of up to 25 percent of the project costs, in a total amount not to exceed $250,000, to public entities which propose to perform a remedial action that uses an innovative technology or that would result in an unrestricted use remedial action or a limited restricted use remedial action; and

5. In a brownfield development area, for preliminary assessment, site investigation, remedial investigation and remedial action on contaminated real property. An ownership interest in the real property shall not be required; however, any grant awarded for remedial action on real property not owned by the public entity shall be subject to the lien provisions set forth in N.J.A.C. 19:31-8.4.

(c) Financial assistance from the Fund may be made for eligible projects to persons for:

1. Remediation of real property located in a qualifying municipality, as defined in N.J.S.A. 52:27D-178;

2. Remediation on contaminated sites, or on sites at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and such discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area;

3. Persons who voluntarily undertake the remediation of a discharge of a hazardous substance or hazardous waste, pursuant to the N.J.A.C. 7:26C, and who have not been ordered or directed to perform the remediation by the Department or by a court pursuant to Section 27b(3) of the Act; and

4. Persons who own and plan to remediate an environmental opportunity zone for which an exemption from real property taxes has been granted.

(d) Grants from the Fund may be made for eligible projects to persons for:

1. Persons who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person is an innocent party, a grant may be up to 50 percent of the remediation costs, but shall not exceed the total grant amount of $1,000,000; and

2. Matching grants of up to 25 percent of the project costs incurred after receipt of the application by the Department, in a total grant amount not to exceed $250,000 to

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

(e) Preconditions to eligibility are as follows:

1. For public entities:

i. Except for remediation grants made pursuant to (b)5 above, public entities shall either hold a tax sale certificate on the real property; have acquired the real property through foreclosure or other similar means; or have acquired the real property through voluntary conveyance, or have passed a resolution or ordinance or other appropriate document to acquire it through voluntary conveyance for the purpose of redevelopment or for recreation and conservation purposes. Regarding the third precondition above, the document authorizing the real property acquisition may also provide that, should good faith negotiations fail, the public entity may choose to exercise its right of eminent domain in order to acquire title to the real property. Additionally, there must have been a discharge, or there is currently a suspected discharge, of a hazardous substance or hazardous waste on the real property.

ii. Except for grant awarded pursuant to (b)2, 3 or 5 above, no grant or financial assistance shall be awarded for a remedial action until the public entity actually owns the real property.

iii. No grant shall be awarded unless the public entity has adopted a comprehensive plan for the development or redevelopment of contaminated, or potentially contaminated real property, or can demonstrate to the Authority that a realistic opportunity exists that the real property will be developed or redeveloped within three years from the completion of the remediation.

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

3. Financial assistance from the Fund may only be rendered to persons who cannot establish a remediation funding source for the full amount of the remediation and may be rendered only for that amount of the cost of remediation for which the person cannot establish a remediation funding source. An applicant for financial assistance or a grant shall certify to the Department and to the Authority that it cannot establish a remediation funding source for all or part of the remediation costs. This requirement shall not apply to public entities or to persons who are not required to establish a remediation funding source for the part of the remediation involving an innovative technology, an unrestricted use remediation funding source for the part of the remediation involving an innovative technology, an unrestricted use remedial action, persons performing a remediation in an environmental opportunity zone, or persons who voluntarily perform a remediation.

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

Amended by R.1994 d.375, effective July 18, 1994.
See: 26 N.J.R. 1612(b), 26 N.J.R. 2918(a).
Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).
Rewrote the section.
Amended by R.2006 d.369, effective October 16, 2006.
See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).
Rewrote the section.

19:31-8.4 Lien provision

Any expenditure of grant monies by a public entity for a remedial action in a brownfield development area for real property in which the public entity does not have an ownership interest shall constitute a debt of the real property owner to the fund. The authority shall cause to be filed in the county recording office of the county in which the real property is located a notice of lien listing the name of the real property owner, a description of the real property subject to the remedial action and an identification of the amount of the grant awarded from the fund. The notice of lien shall have priority over all other claims or liens which have been filed against the real property, except as provided in the act. The lien shall be removed upon transfer of ownership of the real property to the public entity that expended grant monies for remedial action on that real property.

New Rule, R. 2006 d.369, effective October 16, 2006.
See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).
Former N.J.A.C. 19:31-8.4, Terms of financial assistance, recodified to N.J.A.C. 19:31-8.5.

19:31-8.5 Financial assistance: term; interest rate; transfer of title

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

(b) Loans to public entities shall bear an interest rate equal to two points below the Federal Discount Rate at the time of approval or at the time of loan closing, whichever is lower, except that the rate shall be no lower than three percent. Loans to persons shall bear an interest rate equal to the Federal Discount Rate at the time of approval or at the time of the loan closing, whichever is lower, with a minimum floor of five percent.

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

unpaid balance of the loan that is transferred by devise or succession shall not become immediately payable in full, and loan repayments shall be made by the new title holder of the real property.

Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).
Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).
Rewrote (b).
Recodified from N.J.A.C. 19:31-8.4 and amended by R.2006 d.369, effective October 16, 2006.
See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).
Section was "Terms of financial assistance". Rewrote (b) and (c). Former N.J.A.C. 19:31-8.5, Amount of financial assistance and grants, recodified to N.J.A.C. 19:31-8.6.

19:31-8.6 Amount of financial assistance and grants

(a) Financial assistance and grants may be for up to 100 percent of the estimated applicable remediation costs, except that the cumulative maximum amount of financial assistance to a person in any calendar year, for one or more properties, shall be $1,000,000.

(b) Financial assistance and grants to any one public entity shall not exceed $3,000,000 in any calendar year, except as provided in (c) below.

(c) The Authority may award an additional amount of up to $2,000,000 of financial assistance and grants in any calendar year to any one public entity for the remediation of real property in a brownfield development area.

(d) The total cumulative amount of matching grants awarded to public entities for remedial action of real property to be used for recreation and conservation purposes shall not exceed $5,000,000 in any calendar year.

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

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

(g) The amount of a grant for costs of a remedial action shall not include the cost to remediate a site to meet residential soil remediation standards if the local zoning ordinances do not allow for residential use.

Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).
In (a), deleted "and grants" following "assistance"; and in (b), inserted "or NJRA" following "entity".
Recodified from N.J.A.C. 19:31-8.5 and amended by R.2006 d.369, effective October 16, 2006.
See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).
In (a), substituted "remediation" for "Remediation"; rewrote (b); added new (c), (d) and (g); recodified former (c) and (d) as new (e) and (f); and in (f), inserted "awarded". Former N.J.A.C. 19:31-8.6, Priority system for financial assistance and grants, recodified to N.J.A.C. 19:31-8.7.

19:31-8.7 Priority system for financial assistance and grants

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

1. Sites on which there has been a discharge and the discharge poses an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area; and

2. Sites in areas designated as Planning Area 1, Planning Area 2, designated centers, or areas receiving plan endorsement as designated pursuant to the "State Planning Act," section 1 through 12 of P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), sites that the Brownfields Redevelopment Task Force, established pursuant to section 5 of P.L. 1997, c. 278 (N.J.S.A. 58:10B-23), determines are of immediate economic development potential, and sites in brownfield development areas.

3. The Chief Executive Officer of the Authority shall, from time to time review the allocation of moneys in the Fund and the requirements of applicants for money from the Fund and reallocate the moneys to the extent permissible under section 28(a) of the Act.

Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).
In (b), inserted a reference to the NJRA.
Amended by R.2005 d.274, effective August 15, 2005.
See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).
In (a)2, substituted "Chief Executive Officer" for "Executive Director".
Recodified from N.J.A.C. 19:31-8.6 and amended by R.2006 d.369, effective October 16, 2006.
See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).
In the introductory paragraph of (a), substituted "in the following order of priority:" for a period at the end; rewrote (a)1; added new (a)2; recodified former (a)2 as new (a)3; and deleted (b). Former N.J.A.C. 19:31-8.7, Application for financial assistance and grants, recodified to N.J.A.C. 19:31-8.9.

19:31-8.8 Non-profit pilot program

In accordance with the Act, an allocation from the Fund in an amount not to exceed $5,000,000 shall be set aside for a Non-Profit Pilot Program. Under this Pilot Program, grants may be made for eligible projects to non-profit organizations for the purpose of funding preliminary assessment, site investigation and remedial investigation of real property that has been contaminated or is suspected of being contaminated by the discharge of a hazardous substance. All of the limitations and conditions for the award of financial assistance and grants applicable to municipalities pursuant to the provisions of the Brownfields and Contaminated Site Remediation Act,

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

Administrative Correction.
See: 26 N.J.R. 2462(b).
Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).
Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).
Rewrote (d) and (f); in (e), inserted a reference to grants; and in (g), substituted a reference to closings for a reference to loan closings, and deleted a reference to sponsors.
Amended by R.2000 d.482, effective December 4, 2000.
See: 32 N.J.R. 3555(a), 32 N.J.R. 4275(b).
In (f), added "for municipalities and within 30 days of the date of the notice of approval or month's end, whichever is later (acceptance date) for other applicants" at the end of the second sentence, and inserted "for municipalities and 180 days from the acceptance date for other applicants" following "acceptance" in the third sentence.
Recodified from N.J.A.C. 19:31-8.9 and amended by R.2006 d.369, effective October 16, 2006.
See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).
Rewrote (a) and (d)1; in (e), substituted "person" for "private entity" and "public entity" for "municipal governmental entity or NJRA"; in (f), substituted "applicant or public entity" for "municipality", "its designated representative" for "attorney for the applicant", and "public entities" for "municipalities" twice; and, also in (f), deleted "of Environmental Protection" following "Department". Former N.J.A.C. 19:31-8.11, Attorney General review, recodified to N.J.A.C. 19:31-8.13.

19:31-8.12 Disbursement of financial assistance and grants

(a) All requests for disbursements of the financial assistance or grant must be submitted by the applicant with a certification from the contractor or consultant that the requested moneys will be spent or have been spent in accordance with a Department approved scope of work and a certification from the applicant that it is in full compliance with all of the terms and conditions of the assistance agreement. Disbursements are subject to certain preconditions, including, among other things, approval by the Department of the remediation contracts and all previously performed work.

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

(c) In the case of a grant, payment will be conditioned upon the subrogation to the Department of all rights of the recipient to recover remediation costs from the discharger or other liable party. All moneys collected in a cost recovery subrogation action shall be deposited into the Fund.

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

(e) Upon request, the recipient of financial assistance or grant shall provide the Authority with evidence that the monies are being spent in accordance with the Department approved scope of work, and that it is adhering to the terms and conditions of its agreement with the Authority.

Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).
Rewrote (a); in (c), substituted a reference to liable parties for a reference to responsible parties, and added a second sentence; and in (d) inserted a reference to the NJRA.
Recodified from N.J.A.C. 19:31-8.10 and amended by R.2006 d.369, effective October 16, 2006.
See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).
In (a), inserted "or have been spent" and substituted "with" for "within" following "accordance"; in (b), substituted "to" for "by" following "access,"; in (d), deleted "other than a municipal governmental entity or the NJRA" following "person"; and added (e). Former N.J.A.C. 19:31-8.12, Fees, recodified to N.J.A.C. 19:31-8.14.

19:31-8.13 Attorney General review

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

Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).
Recodified from N.J.A.C. 19:31-8.11 by R.2006 d.369, effective October 16, 2006.
See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).
Former N.J.A.C. 19:31-8.13, Public record, recodified to N.J.A.C. 19:31-8.15.

19:31-8.14 Fees

A $500.00 application fee shall be due upon submittal of an application for financial assistance or a grant. A commitment fee and closing fee for financial assistance will be charged in accordance with the Authority's fee rules (see N.J.A.C. 19:30-6). No Authority fees shall be paid from the financial assistance or grant award.

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.
Recodified from N.J.A.C. 19:31-8.12 and amended by R.2006 d.369, effective October 16, 2006.
See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).
Rewrote the section.

19:31-8.15 Public record

All information submitted to the Department and/or the Authority as part of an application for financial assistance or grant shall be deemed a public record subject to the provisions of P.L. 1963, c.73 (N.J.S.A. 47:1A-1 et seq.).

Recodified from N.J.A.C. 19:31-8.13 by R.2006 d.369, effective October 16, 2006.
See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM

19:31-9.1 Applicability and scope

These rules are promulgated by the New Jersey Economic Development Authority (the "Authority") to implement the Urban Transit Hub Tax Credit Act, P.L. 2007, c. 346 (the "Act"), as amended by P.L. 2009, c. 90. The Act establishes a tax credit program for capital investment and increased employment in targeted urban rail transit hubs to catalyze economic development in those transit hubs. The Act further provides that the Urban Transit Hub Tax Credit Program (the "Program") is to be administered by the New Jersey Economic Development Authority and that the Authority consults with the Director of the Division of Taxation in the Department of the Treasury when adopting rules for the Program. The Program provides that businesses making at least $50,000,000 in new capital investments in a qualified business facility in an "urban transit hub" and employing at least 250 full-time employees at that facility may be eligible for tax credits in order to catalyze economic development in those urban areas. Businesses may apply for the tax credits by January 13, 2013 and satisfy the capital investment and employment conditions for award of the credits by January 13, 2016, subject to the rules in this subchapter. The tax credits are equal to 100 percent of the claimants' qualified capital investments made, and taxpayers may apply 10 percent of the total credit amount per year over a 10-year period against their corporation business tax, insurance premiums tax or gross income tax liability. Tenants in qualified business facilities may also receive tax credits, if they occupy space in a qualified business facility that proportionally represents at least $17,500,000 of the capital investment in the facility and employ at least 250 full-time employees in that facility. Developers may apply for a credit of up to 20 percent of their capital investment in a qualified residential project by July 28, 2014 and satisfy the capital investment conditions for award of credits by July 28, 2017, subject to the rules in this subchapter. The tax credits are reduced to 80 percent if 200 new jobs (to the State) are not created, or forfeited if certain facility and Statewide employment levels are not maintained. The program is limited to municipalities that are eligible for urban aid, that had at least 30 percent of their real property value exempt from property taxes during 2006, and that have a specified commuter rail station, excluding any rail station located at an international airport.

Amended by R.2010 d.177, effective August 16, 2010.
See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).
Inserted ", as amended by P.L. 2009, c. 90", the seventh sentence, "to 80 percent if 200 new jobs (to the State) are not created," and "during 2006", substituted "$50,000,000" for "$75 million", "$17,500,000" for "$25 million" and "had at" for "have a" preceding "least 30 percent", and deleted "and all light rail stations" following "airport".

19:31-9.2 Definitions

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

"Acquisition" means the purchase of a qualified business facility between unrelated parties pursuant to an arm's length transaction. The value of the land shall be appraised as vacant and subtracted from the purchase price to determine the amount of the capital investment. If the acquisition is of a facility that existed prior to the January 13, 2008 effective date of the Act, the buyer shall undertake capital investments of a value not less than 50 percent of the total cost to acquire the facility in order for the acquisition of such facility to be included in this Program.

"Act" means the Urban Transit Hub Tax Credit Act, P.L. 2007, c. 346.

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business, and may include not-for-profit entities. 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, as amended, 26 U.S.C. §1563 or the entity is an organization in a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. §414(b), (c). A taxpayer 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. 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

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

To the extent a business (and not an unaffiliated third party) undertakes the construction of the project within two years of the business' execution of a commitment letter for the grant, 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. 19:30-5, in the performance of the construction contract.

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".

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 paid for any major changes, additions or modifications to the grant, such as those requiring extensive staff time and Board approval.

(f) A non-refundable fee of $750.00 shall be paid for any extension to the expiration date of a grant.

(g) An annual servicing fee shall be paid to the Authority by the business and shall be deducted from the annual grant payment to the business. The servicing fee shall be two percent of the annual grant disbursement with an annual cap of $75,000.

(h) A non-refundable post-benefit retention equaling 20 percent of the final award shall be deducted at the time of disbursement for costs associated with monitoring annual job creation reports which, if all post award reporting is done pursuant to the grant agreement, shall be refunded at the end of the required reporting period with EDA retaining one percent per year for servicing costs.

Amended by R.1998 d.150, effective March 16, 1998.
See: 29 N.J.R. 5236(a), 30 N.J.R. 1053(b).
In (b), decreased the floor from $1,500 to $500.
Amended by R.2001 d.242, effective July 16, 2001.
See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).
In (b), inserted "and an annual cap of $10,000" following "$500.00".
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 (c) though (e).
Amended by R.2009 d.38, effective January 20, 2009.
See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).
Substituted "non-refundable" for "nonrefundable" throughout; in (a), substituted "$1,000" for "$500.00"; rewrote (b); in (c), substituted "$1,000" for "$750.00"; added new (d); recodified former (d) and (e) as (e) and (f); in (e), inserted "administrative" and "; 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"; and added (g) and (h).

19:31-10.13 Attorney General review

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

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

19:31-11.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement those sections of P.L. 1997, c.235 (N.J.S.A. 58:10A-37.1 et seq.) and P.L. 2003, c.148, which pertain to the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund. The former Act established the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, a special revolving fund for the purpose of financing remediation due to the discharge of petroleum from a petroleum underground storage tank or for the costs of upgrade and closure of a regulated tank.

Amended by R.2004 d.347, effective September 20, 2004.
See: 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).
Inserted "and P.L. 2003, c.148" preceding ", which pertain" and substituted "The former Act" for "This Act" at the beginning of the second sentence.

19:31-11.2 Definitions

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

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

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

"Authority" means the New Jersey Economic Development Authority.

"Department" means the Department of Environmental Protection.

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

"Eligible owner or operator" means:

1. Any owner or operator other than the owner or operator of a petroleum underground storage tank storing heating oil for onsite consumption in a residential building who owns or operates less than 10 petroleum underground storage tanks in New Jersey, who has a net worth of less than $2,000,000 and who demonstrates to the satisfaction of the Authority, the inability to qualify for and obtain a commercial loan for all or part of the eligible project costs, or in the case of such an owner or operator of a facility located within an area designated as a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a designated center as designated pursuant to the "State Planning Act," sections 1 through 12 of P.L. 1985, c.398 (N.J.S.A. 52:18A-196 et seq.), who has a net worth of less than $3,000,000 and who demonstrates to the satisfaction of the Authority, the inability to qualify for and obtain a commercial loan for all or part of the eligible project costs;

2. The owner or operator of a petroleum underground storage tank storing heating oil for onsite consumption in a residential building;

3. A public entity who owns or operates a petroleum underground storage tank in New Jersey;

4. An independent institution of higher education that owns or operates a petroleum underground storage tank;

5. A nonprofit organization, corporation, or association with not more than 100 paid employees, that is qualified for exemption from Federal taxation pursuant to section 501(c)(3) of the Federal Internal Revenue Code, 26 U.S.C. § 501(c)(3), who owns or operates less than 10 petroleum underground storage tanks in New Jersey, who has a net worth of less than $2,000,000 and who demonstrates to the satisfaction of the Authority the inability to qualify for and obtain a commercial loan for all or part of the eligible project costs, or in the case of such an owner or operator of a facility located within an area designated as a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a designated center as designated pursuant to the "State Planning Act," sections 1 through 12 of P.L. 1985, c.398 (N.J.S.A. 52:18A-196 et seq.), has a net worth of less than $3,000,000 and demonstrates to the satisfaction of the Authority the inability to qualify for and obtain a commercial loan for all or part of the eligible project costs; or

6. A duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad who owns or operates less than 10 petroleum underground storage tanks in New Jersey, and who has a net worth of less than $2,000,000, or in the case of such an owner or operator of a facility located within an area designated as a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a designated center as designated pursuant to the "State Planning Act," sections 1 through 12 of P.L. 1985, c.398 (N.J.S.A. 52:18A-196 et seq.), has a net worth of less than $3,000,000.

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

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

tors, from their own funds, for remediation efforts undertaken after filing an application for financial assistance from the fund for the eligible project costs of the remediation.

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

"Financial assistance" means a grant or loan or a combination of both.

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

"Independent institution of higher education" means those institutions of higher education incorporated and located in this State, which, by virtue of law or character or license, are nonprofit educational institutions empowered to grant academic degrees and which provide a level of education which is equivalent to the education provided by the State's public institutions of higher education as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which are eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey. "Independent institution of higher education" does not include any educational institution dedicated primarily to the preparation or training of ministers, priests, rabbis, or other professional persons in the field of religion.

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

"Owner" means any person who owns a facility.

"Paid employees" means:

1. All persons in an employment position in New Jersey certified by the applicant as permanent, which position provides for employment for compensation for at least 35 hours per week where the wages for such position are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1–1 et seq.; or

2. Persons holding such other employment arrangement approved in writing by the Authority. Paid employees shall not include temporary or seasonal employees or those employed by a vendor, independent contractor, consultant, agent or other entity doing business with the applicant unless approved in writing by the Authority.

"Pension" means a sum of money, usually funded fully or in large part by an employer, or in the case of the self-employed, by the pension recipient, set aside for the recipient as a retirement benefit. This includes, but is not limited to, all plans as defined by 26 U.S.C. § 401.

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

"Primary residence" means a homestead actually and continually occupied by an applicant as the applicant's permanent residence, as distinguished from a vacation home, property owned and rented or offered for rent by the applicant, and other secondary real property holdings.

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

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

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

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

Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).
In "Applicant", inserted a reference to limited liability corporations.
Amended by R.2004 d.347, effective September 20, 2004.
See: 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).
Rewrote "Eligible owner or operator" and "Eligible project costs", and added "Independent institution of higher education", "Paid employees", "Pension" and "Primary residence".

19:31–11.3 Eligibility

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

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

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

3. Owners or operators of regulated tanks that are not operational to finance the closure and remediation of those tanks for 18 months after the date of discovery of the tank, or February 15, 2005, whichever is later.

Amended by R.2004 d.347, effective September 20, 2004.
See: 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).
In (a), added 3.

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

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

1. Reimburse eligible owners or operators for the eligible project costs of the remediation when an applicant has expended their own funds on a remediation after filing an application for financial assistance from the fund for the eligible project costs of the remediation;

2. Reimburse independent institutions of higher education that have expended their own funds on a remediation prior to filing an application for financial assistance from the fund for expenditures for the eligible project costs of the remediation made on or after December 1, 1996, in an amount not to exceed $500,000 for each institution; or

3. Reimburse eligible owners or operators for the eligible owners or operators for the eligible project costs of a preliminary assessment or site investigation performed after August 30, 1997.

(b) Financial assistance may be for 100 percent of the eligible project costs. Loans for upgrade, remediation or closure, or any combination, for any one facility, shall not exceed $2,000,000, except as provided in (c) and (d) below.

(c) A public entity applying for financial assistance from the fund may only be awarded financial assistance in the form of an interest free loan. In the case of an eligible owner or operator of a facility located within an area designated as a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a designated center as designated pursuant to the "State Planning Act," sections 1 through 12 of P.L. 1985, c.398 (N.J.S.A. 52:18A–196 et seq.), the eligible owner or operator may receive a loan in an amount not to exceed $3,000,000.

(d) A loan that an applicant may receive from the fund for a remediation of a discharge that poses a threat to a drinking water source may not exceed $3,000,000.

(e) Grants for upgrade, remediation or closure, or any combination, for any one facility, shall not exceed $500,000 except as provided in (f) below.

(f) In the case of an eligible owner or operator of a facility located within an area designated as a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a designated center as designated pursuant to the "State Planning Act," sections 1 through 12 of P.L. 1985, c.398 (N.J.S.A. 52:18A–196 et seq.), the eligible owner or operator may receive a grant in an amount not to exceed $750,000 for each facility so located.

(g) An application for financial assistance from the fund for an upgrade or closure of a regulated tank shall include all regulated tanks at the facility for which the applicant is seeking financial assistance. Once financial assistance for an upgrade or closure is awarded for a facility, no additional award of financial assistance for upgrade or closure costs may be made for that facility. However, if an applicant discovers while performing upgrade or closure activities that a remediation is necessary at the site of a facility, and if financial assistance was previously awarded for that site only for an upgrade or closure of a regulated tank, the applicant may amend his application and apply for financial assistance for the required remediation subject to the limitations enumerated in section 5 of P.L. 1997, c.235 (N.J.S.A. 58:10A–37.5). An application for financial assistance for an upgrade or closure of a regulated tank shall be conditioned upon the applicant agreeing to perform, at the time of the upgrade or closure, any remediation necessary as a result of a discharge from the regulated tank and commencement of the remediation within the time prescribed and in accordance with all appropriate rules and regulations.

(h) 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.

(i) An applicant, other than a public entity, may apply for and receive a conditional hardship grant or a loan for the upgrade, closure, or remediation of an underground storage tank. An applicant for a conditional hardship grant or a loan for an upgrade may be eligible for financial assistance only for any underground storage tank with a capacity of over 2,000 gallons used to store heating oil for onsite consumption in a nonresidential building that has received an extension of the deadline for compliance with the standards pursuant to subsection b of section 9 of P.L. 1986, c.102 (N.J.S.A. 58:10A–29).

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

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

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

conditional hardship grant was made, the conditional hardship grant shall become immediately payable in full, to the extent required by N.J.S.A. 58:10A–37.16. No repayment of a conditional hardship grant shall be required for a remediation necessitated by a discharge at the applicant's primary residence.

(m) An applicant, other than a public entity, may apply for and receive a conditional hardship grant based on Authority findings of:

1. Eligibility;

2. Financial hardship; and

3. Satisfaction of statutory criteria at N.J.S.A. 58:10A–37.5(c).

(n) In order to be eligible for a conditional hardship grant for closure or upgrade, in the case of a regulated tank, the applicant shall:

1. Have owned or operated the subject regulated tank as of December 1, 2002 and continually thereafter or shall have inherited the property from a person who owned the regulated tank as of that date; and

2. Not have a taxable income of more than $200,000 or a net worth, exclusive of the applicant's primary residence and pension, of over $200,000.

(*o*) In order to be eligible for a conditional hardship grant for remediation, in the case of a regulated tank, the applicant shall:

1. Have owned or operated the subject regulated tank at the time of tank closure and continually thereafter or shall have inherited the property from a person who owned the regulated tank as of that date; and

2. Not have a taxable income of more than $200,000 or a net worth, exclusive of the applicant's primary residence and pension, of over $200,000.

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

(q) Notwithstanding the eligibility requirements for net worth and income, an independent institution of higher education, a nonprofit organization, corporation or association with not more than 100 paid individuals that is qualified for exemption from Federal taxation pursuant to section 501(c)(3) of the Federal Internal Revenue Code, 26 U.S.C. § 501(c)(3), or a duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad shall be eligible for a conditional hardship grant for eligible project costs of a closure or remediation of a petroleum underground storage tank.

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.347, effective September 20, 2004.
See: 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).
Rewrote the section.

19:31–11.5 Priority system for financial assistance

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

1. Upgrades of regulated tanks required to be upgraded pursuant to 42 U.S.C. §§ 6991 et seq., including necessary remediation at the site of the regulated tank;

2. Closure of any regulated tank required to be upgraded pursuant to 42 U.S.C. §§ 6991 et seq., including necessary remediation at the site of the regulated tank;

3. Upgrades of regulated tanks requiring upgrade pursuant to N.J.S.A. 58:10A–21 et seq. but not pursuant to 42 U.S.C. §§ 6991 et seq. and necessary remediation at the site of the regulated tank;

4. Any necessary remediation at the sites of petroleum underground storage tanks other than those given priority in (a)1, 2 and 3 above;

5. Closure of any regulated tank required to be upgraded pursuant to N.J.S.A. 58:10A–21 et seq., but not pursuant to 42 U.S.C. §§ 6991 et seq.

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

19:31–11.6 Application for financial assistance

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

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

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

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

(e) A change in the filing date resulting from failure to submit a completed application or from failure to submit the application fee in a timely fashion for applications filed for financial assistance for a regulated tank to meet the upgrade or closure requirements pursuant to 42 U.S.C. §§ 6991 et seq. or P.L. 1986, c.102 (N.J.S.A. 58:10A–21 et seq.) or for the remediation of a discharge from any such regulated tank shall not render the application ineligible for financial assistance as long as the initial date of application is prior to June 30, 2005, or for a regulated tank that is not operational, 18 months from the date of discovery of the tank or February 15, 2005, whichever is later.

(f) No financial assistance for upgrade shall be awarded for any underground storage tank with a capacity of over 2,000 gallons used to store heating oil for onsite consumption in a nonresidential building required to be upgraded by P.L. 1986, c.102 (N.J.S.A. 58:10A–21 et seq.) but not pursuant to 42 U.S.C. §§ 6991 et seq., unless the applicant has received an extension of the deadline for compliance with the standards pursuant to subsection b of section 9 of P.L. 1986, c.102 (N.J.S.A. 58:10A–29), the application is filed with the Authority prior to June 30, 2005, and the application is complete and the application fee received by December 31, 2005.

(g) No financial assistance for closure shall be awarded for any regulated tank required to meet the upgrade or closure requirements pursuant to 42 U.S.C. §§ 6991 et seq. or P.L. 1986, c.102, or for the remediation of a discharge from any such regulated tank, unless the application is filed with the Authority prior to June 30, 2005, and the application is complete and the application fee received by December 31, 2005.

1. In the case of a regulated tank that is not operational, financial assistance for the closure or the remediation of any discharge therefrom may be awarded if the application is filed with the Authority no more than 18 months from the date of discovery of the tank or February 15, 2005, whichever is later.

(h) A completed application from an applicant shall include, if applicable as determined by the Authority:

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

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

3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds, or, for an individual, copies of tax returns for the three most recent years;

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

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

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

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

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

(i) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts receivable;

3. Aging of accounts payable;

4. Submission of documentation or other information on the nature and scope of the work to be performed, cost estimates, and proofs of the actual costs of all work performed;

5. Demonstration of an ability to repay the amount of any loan and to provide adequate collateral to secure the loan; and/or

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

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

Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).
In (e), substituted a reference to applicants for a reference to businesses in the introductory paragraph, and deleted a former 9.
Amended by R.2004 d.347, effective September 20, 2004.
See: 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).
Added a new (e) through (g), and recodified former (e) through (g) as (h) through (j).

19:31–11.7 Evaluation process for financial assistance

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

1. Visitation to the applicant's place of business;

2. An analysis of historic and projected financial statements and a comparison to industry peers;

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard and Poor's Industry Survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

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

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

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

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

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

19:31–11.8 Approval process for financial assistance

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

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

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

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

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

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

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

(e) Within 120 calendar days of receipt of the notice of approval of financial assistance, an applicant shall submit to the Authority an executed contract for the remediation upgrade and/or closure activities for which the financial assistance was approved. The contract shall indicate the nature and scope of the work to be performed, cost estimates of the work, and, as available, proofs of the actual costs of all work performed. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for alteration of the applicant's priority ranking for the awarding of financial assistance.

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

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

Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).
In (d)1, substituted "in the case of a loan may" for "will" following "Authority and" in the introductory paragraph, and inserted a references to corporate guarantees in ii; in (e), rewrote the first sentence; and in (f), inserted "applicant or" preceding "attorney".

19:31-11.9 Disbursement of financial assistance

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

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

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

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

Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).
In (b), deleted a reference to grants.
Amended by R.2001 d.242, effective July 16, 2001.
See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).
In (a), inserted "or will be" preceding "spent in accordance".

19:31-11.10 Attorney General review

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

19:31-11.11 Fees

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

1. $250.00 for residential tanks per facility;

2. $500.00 for nonresidential tanks up to six tanks per facility; and

3. $1,000 for seven or more nonresidential tanks per facility.

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

1. Facilities with one or two petroleum underground storage tanks shall pay $1,500.

2. Facilities with three to six petroleum underground storage tanks shall pay $3,500.

3. Facilities with more than seven petroleum underground storage tanks shall pay $6,000.

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

19:31-11.12 Public record

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

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

SUBCHAPTER 12. TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM

19:31-12.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1997, c. 334, 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).