

**CHAPTER 31**

**AUTHORITY ASSISTANCE PROGRAMS**

**Authority**

N.J.S.A. 34:1B-1 et seq.; P.L. 2009, c. 90.; and P.L. 2011, c. 149 (N.J.S.A. 34:1B-242 et seq.).

**Source and Effective Date**

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

**Chapter Expiration Date**

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

**Chapter Historical Note**

Chapter 31, Authority Assistance Programs, was adopted as R.1990 d.410, effective August 20, 1990. See: 22 N.J.R. 1545(a), 22 N.J.R. 2536(a).

Subchapter 7, Local Development Financing Fund, was adopted as R.1992 d.421, effective October 19, 1992. See: 24 N.J.R. 2534(a), 24 N.J.R. 3735(a).

Subchapter 8, Hazardous Discharge Site Remediation Fund, was adopted as R.1994 d.192, effective April 18, 1994. See: 25 N.J.R. 4468(a), 26 N.J.R. 1706(c).

Subchapter 9, New Jersey Boat Industry Loan Guarantee Fund, was adopted as R.1994 d.376, effective July 18, 1994. See: 26 N.J.R. 1613(a), 26 N.J.R. 2919(a).

Pursuant to Executive Order No. 66(1978), Chapter 31, Authority Assistance Programs, was readopted as R.1995 d.435, effective July 20, 1995. See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

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

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

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

Pursuant to Executive Order No. 66(1978), Chapter 31, Authority Assistance Programs, was readopted as R.2000 d.297, effective June 16, 2000. See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Chapter 31, Authority Assistance Programs, was readopted as R.2005 d.274, effective July 22, 2005. As a part of R.2005 d.274, Subchapter 5, Export Revolving Line of Credit; Subchapter 6, New Jersey Trade Adjustment Assistance Center; Subchapter 9, New Jersey Boat Industry Loan Guarantee Fund and Subchapter 13, Rules for Implementation of an Act Concerning the Restructuring of Certain Solid Waste Facility Bonds, and Providing for the Financing Thereof through the New Jersey Economic Development Authority, P.L.2001, c.401 were repealed, effective August 15, 2005. See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

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

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

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

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

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

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

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

Subchapter 18, Grow New Jersey Assistance Program, was adopted as new rules by R.2012 d.118, effective June 18, 2012. See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

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

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

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

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

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

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

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

**19:31-9.14 Reporting requirements; letter of compliance**

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

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

i. The number of full-time employees and new full-time positions employed at the qualified business fa-

cility, the number pertaining to the business's Statewide employment, total lease payments and information on any change or anticipated change in the identity of the entities comprising the business elected to claim all or a portion of the credit. This certified report is due 120 days after the end of the business's tax privilege period; and, failure to submit the certified report within 120 days will result in forfeiture of the tax credit for that privilege period; and

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

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

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

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

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

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

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

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

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

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

Section was "Reporting requirements; letter of compliance".

**19:31-9.15 Appeals**

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

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

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

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

Recodified from N.J.A.C. 19:31-9.14 by R.2010 d.177, effective August 16, 2010.  
See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).  
Former N.J.A.C. 19:31-9.15, Severability, recodified to N.J.A.C. 19:31-9.16.

**19:31-9.16 Severability**

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

Recodified from N.J.A.C. 19:31-9.15 by R.2010 d.177, effective August 16, 2010.  
See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

**SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM****19:31-10.1 Applicability and scope**

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L.

1996, c.26, as amended by P.L. 2003, c.166. This Act establishes the Business Employment Incentive Program, a special business assistance program to provide grants to businesses located in, or relocating to, New Jersey that create new jobs in New Jersey.

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

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

**19:31-10.2 Definitions**

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

"Act" means the New Jersey Economic Development Authority Act, N.J.S.A. 34:1B-1 et seq. as amended and supplemented.

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

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

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

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

"Authority" means the New Jersey Economic Development Authority.

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

"Base years" means the first two complete calendar years following the effective date of an agreement, except that in those instances where significant construction/renovation of the project requires a certificate of occupancy to be awarded prior to occupancy of the project site, the base years will commence upon the issuance of a certificate of occupancy by the municipality.

"Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and subatomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge.

"Biotechnology company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes, or a person, whose headquarters or base of operations is located in New Jersey, engaged in providing services or products necessary for such research, development, production, or provision.

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

"Business" means a corporation, sole proprietorship; partnership, corporation that has made an election under Subchapter S corporation, or any other business entity through which income flows as a distributive share to its owners; limited liability company; a nonprofit corporation; or any other form of business organization located within or outside this State. A grant received by a partnership, Subchapter S corporation, or other such business entity shall be apportioned among the persons to whom the income or profit of the partnership, Subchapter S corporation, or other entity is distributed, in the same proportions as those in which the income or profit is distributed. Business shall also include co-employers pursuant to an employer leasing agreement in accordance with N.J.S.A. 34:8-67 et seq., between an entity that qualifies as a business hereunder and a professional employment organization; provided, however, that for purposes of paying the grant, payment shall be made solely to the entity and not to the professional employment organization.

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

"Commitment duration" means 1.5 times the term of the grant.

"Consumer Price Index" means the consumer price index developed by the United States Bureau of Labor Statistics for Urban Wage Earners and Clerical Workers using the Metropolitan Statistical Area (MSA) by county as developed by the United States Census Bureau in its most recent census. The MSA by county for New Jersey divides the State into northern and southern areas. If the project is located in an area designated as a northern county, the northern index shall be

used and if the project location is in an area designated as a southern county, the southern index shall be used.

"Department" means the Department of Commerce and Economic Development.

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

"Director" means the Director of the Division of Taxation in the Department of Treasury.

"Division" means the Division of Taxation in the Department of Treasury.

"Effective date" means the date of approval of the grant by the Authority's governing board.

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

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

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

"Eligible position" means a new full-time position created by a business in New Jersey or transferred from another state by the business during the base years or subsequent years of a grant. For grants awarded on or after July 1, 2003, eligible position includes only a position for which a business provides employee health benefits under a group health plan as defined under section 14 of P.L. 1997, c.146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes. "Eligible position" also includes all current and future partners or members of a partnership or limited liability company created by a business in New Jersey or transferred from another state by the business pursuant to the conditions set forth in the act during the base years or in subsequent years of a grant. An "eligible position" shall also include a position occupied by a resident of this State whose position is relocated to this State from another state but who does not qualify as a "new employee" because prior to relocation his or her wages or his or her distributive share of income

from a gain, from a loss or deduction, or his or her guaranteed payments or any combination thereof, prior to relocation, were not subject to income taxes imposed by the state or municipality in which the position was previously located. An "eligible position" shall also include a position occupied by a resident of another state whose position is relocated to this State but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq. An "eligible position" shall not include any position located within New Jersey, which, within a period either three months prior to the business' application for a grant under the Act or six months after the date of application, ceases to exist or to be located within New Jersey.

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

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

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

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

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

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

"Full-time employee" means a person who is employed for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, whose wages is subject to withholding as provided in the New Jersey Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.) or who is a partner of an eligible partnership, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A.

54A:1-1 et seq., and who is certified by the applicant to be employed in a permanent position. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

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

"Grant" means a business employment incentive grant provided by the Authority to eligible businesses based on the withholdings of the New Jersey Gross Income Tax collected by that business annually resulting from eligible positions for new employees.

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

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

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

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

"New employee" means a full-time employee first employed in an eligible position by a business at the project which is the subject of an Agreement or who is a partner of an eligible partnership, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, (N.J.S.A. 54A:1-1 et seq.); except that such a New Jersey resident whose position is relocated to this State shall not be classified as a "new employee" unless his or her wages, or his or her distributive share of income from a gain, from a loss or deduction, or his or her guaranteed payments or any combination thereof, prior to the relocation, were subject to income taxes imposed by the State or municipality in which the position was previously located. "New employee" also may include an employee rehired or called back from a bona fide layoff during or following the base years to a vacant position

previously held by that employee or to a new position established during or following the base years. "New employee" shall not include: any person who was previously employed in New Jersey by the business or by a related person as defined in N.J.S.A. 54:10A-5.5 if the employee is transferred to the business which is the subject of an Agreement unless the employee's position at his or her previous employer is filled by a new employee. "New employee" shall also not include a child, grandchild, parent, or spouse of an individual associated with the business who has direct or indirect ownership of at least 15 percent of the profits, capital or value of the business, provided, however, that "new employee" shall include any person who was previously employed in New Jersey by a professional employment organization and a business if the employee is co-employed by the same professional employment organization and a different business. "New employee" shall also include an employee whose position is relocated to this State but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq. In addition, if a business receiving a grant merges, consolidates, or otherwise combines with another business entity and the resulting company employs former employees in eligible positions on the project, then such employees shall be deemed new employees, except for any employee who was employed by a business entity or entities merging, combining or consolidating with the business receiving a grant who would have not qualified as a new employee if the merging, combining or consolidating business entity had applied for a grant.

"New employment commitment" shall mean the number of new employees projected at the time of application or if this projected number has not been reached by the end of the base years, the number of employees actually hired at the end of the base years but in no case shall it exceed the number of new employees which the business has represented at application that it will employ and maintain during and throughout the commitment duration. New employment commitment shall also have the meanings set forth in N.J.A.C. 19:31-10.5(c) and (d).

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

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

"Point-of-purchase retail facility" means a business where-in the normal and customary method of patronizing the

business conducted at the facility requires the retail consumer to travel to the location to purchase the goods or professional or consumer services of that business. "Point-of-purchase retail facilities" shall not include catalog distribution centers for the purposes of this program.

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

"Project" means the relocation and/or expansion of a business in New Jersey that is creating new employment opportunities; the wages of which are subject to the provisions of the New Jersey Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.). Project may constitute multiple locations of a business within New Jersey, but each location must meet the requirements of N.J.A.C. 19:31-10.3.

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

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

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

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

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

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

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

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

Rewrote "Business", "New employee", and "Withholdings"; added "Base employment number", "Commitment duration", "New employment commitment", and "Professional employment organization".  
Amended by R.2005 d.274, effective August 15, 2005.

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

Rewrote "New employee" definition.

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

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

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

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

Added definition "Full-time employee at the qualified business facility".

### 19:31-10.3 Eligibility

(a) A business may apply to the Authority for a grant if the Authority finds that:

1. The project proposed by the business shall result in a net increase in new employment at the project during the term of the agreement, and the business shall:

i. Create at least 25 eligible positions in the base years; or

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

2. In the case of a business which is a landlord, the landlord may apply to the Authority in one consolidated application for a Business Employment Incentive Grant for any project which creates at least 25 eligible positions in the base years, and in which the tenants of members of the cooperative association have agreed to assign to the landlord any claim of right that they may have individually to a grant and have agreed to cooperate with the landlord in providing to the Authority all information required for the initial application, the Agreement and annually thereafter any other information which may be required by the Authority.

i. In the event the tenants individually meet the eligibility standards set forth herein, the tenant may elect to submit its own application for a grant rather than through its landlord;

3. The project is economically sound and will benefit the people of New Jersey by increasing opportunities for employment and by strengthening the State's economy;

i. The Authority will evaluate the financial statements and projections of the business and the proposed sources and uses of funds to ensure that the proposed project is economically viable; and

4. The Authority determines that the receipt of the business employment incentive grant will be a material factor in the business's decision to go forward with the project.

(b) Projects which consist solely of point-of-final-purchase retail facilities shall not be eligible for a grant.

1. For projects consisting of both point-of-final-purchase retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities shall be eligible for a grant, and only withholdings from new employees which are employed in the portion of the project which represents non-retail facilities shall be used to determine the grant.

2. If warehouse facilities are part of a point-of-final-purchase retail facility and the warehouse facilities supply only the retail facility, the warehouse facility shall not be eligible for a grant.

(c) A business which is receiving a Business Relocation Assistance Grant pursuant to P.L. 1996, c.25 shall not be eligible for a Business Employment Incentive Grant, except upon written approval by the State Treasurer.

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

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

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

Rewrote (a) and added (d).

### 19:31-10.4 Amount/term of grant

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

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

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