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**RULE ADOPTIONS**

**OTHER AGENCIES**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

*42 N.J.R. 2969(a)*

**Readoptions with Amendments: *N.J.A.C. 19:30* and *19:31***

**Adopted Repeals: *N.J.A.C. 19:31-5***

**Adopted Repeals and New Rules: *N.J.A.C. 19:30-4.2* and *19:31-8.14***

**Adopted Recodifications with Amendments: *N.J.A.C. 19:30-3.3* and *3.4* as *3.6* and *3.7*, respectively**

**Administrative Rules; Authority Assistance Programs**

Proposed: September 7, 2010 at *42 N.J.R. 2019(a)*.

Adopted: November 8, 2010 by the New Jersey Economic Development Authority, Caren S. Franzini, Chief Executive Officer.

Filed: November 9, 2010 as R.2010 d.285, **with substantive changes** not requiring additional public notice and comment (see *N.J.A.C. 1:30-6.3*).

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

Effective Dates: November 9, 2010, Readoptions;  
December 6, 2010, Amendments, Repeals, New Rules  
and Recodifications.

Expiration Date: November 9, 2015.

**Summary of Public Comment and Agency Response:**

**No public comments were received.**

**Summary of Agency-Initiated Changes:**

At *N.J.A.C. 19:30-3.5(c)9*, the change is intended to clarify the requirements for compliance and thereby lessen any burden of compliance for contractors. Specifically, the Authority is replacing "and" with "or" to provide the Authority

with the ability to seek access to payroll records, in a case where a contractor in fact does not submit the records to the EDA, which will enable the Authority to work with a business to resolve a violation, rather than proceeding straight to enforcement sanctions. If it appears, or is alleged, that a contractor has a non-reporting violation (for example, failure to submit all certified payroll records for each employee for each pay period), the inclusion of "or" would allow a contractor to produce the required records to the Authority, upon request. The reference to *N.J.A.C. 12:60-5.1(c)* is misleading in that it applies to "public works" contracts regulated by the Department of Labor and Workforce Development. The EDA's enabling statute, however, requires the Authority to adopt rules regarding payment of the prevailing wage rate in the performance of construction contracts undertaken with Authority financial assistance. Accordingly, for clarity, it is easier for the regulated community to refer to *N.J.A.C. 19:30-4.4*, which in fact is the Authority's prevailing wage rule.

At *N.J.A.C. 19:30-3.6*, the reference to *N.J.S.A. 10:5-31* et seq. is misleading, in that it implies that the Authority's private economic development projects are "public works" projects, which they are not. The section provides for the EDA's mandatory language for good faith procedures specific to the Authority's privately conducted construction contracts that receive EDA financial assistance. The procedures are almost identical to the State of New Jersey's good faith procedures for "public works" projects adopted pursuant to *N.J.A.C. 17:27-3.8*, whose statutory authority is *N.J.S.A. 10:5-31* et seq. However, it is confusing to cite *N.J.S.A. 10:5-31*, which is an unnecessary reference to the broad New Jersey Law Against Discrimination in this context. A reference to the EDA's ability to pursue (by referral to the Attorney General's office) alleged violations of *N.J.S.A. 10:5-31* et seq. remain intact in *N.J.A.C. 19:30-3.8(b)1*. Therefore, it is more accurate to reference the Authority's rules, thus the change to "this subchapter."

At *N.J.A.C. 19:30-4.4*, the change from the notice of proposal, as in *N.J.A.C. 19:30-3.5* discussed above, is intended to provide more flexibility to regulated businesses through an additional mechanism to allow a contractor to demonstrate compliance to the Authority and forestall enforcement proceedings. Accordingly, the Authority is replacing "and" with "or" to provide the Authority with the ability to seek access to payroll records, in a case where a contractor in fact does not submit the records to the Authority; and, changing "completion date of the project" to "date of payment" is intended to maintain consistency with the requirements of the New Jersey prevailing wage law (*N.J.S.A. 34:11-56.29*). The change is proposed to address certain projects where an applicant, having already commenced a construction project, is requesting financial assistance from the EDA. In such cases, if the applicant is not clear that their contractors should be submitting certified payroll records to the Authority as of the application approval date going forward, the revised language allows the regulated business to provide the required records and demonstrate compliance to forestall enforcement proceedings.

### Federal Standards Statement

A Federal standards analysis is not required because the rules readopted with amendments, repeals and new rules are not subject to any Federal standards or requirements.

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at *N.J.A.C. 19:30* and *19:31*.

**Full text** of the adopted amendments, new rules and recodifications follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

## CHAPTER 30

### ADMINISTRATIVE RULES

#### SUBCHAPTER 2. DISQUALIFICATION/DEBARMENT/CONFLICT OF INTEREST

##### 19:30-2.1 Definitions

(a) For the purposes of this subchapter, the following words and terms shall have the following meanings.

...

"Disqualification" means an exclusion from receiving Authority financial assistance or from being a tenant in an Authority-financed project or Authority-owned project.

"Ethics Liaison Officer" means the Ethics Liaison Officer of the New Jersey Economic Development Authority.

19:30-2.2 Causes for disqualification/debarment of persons

(a) The Authority may decline to give financial assistance, or approval as a tenant in any Authority-financed project or Authority-owned project, to any person, or may debar a person from Authority project contracting for any of the following causes:

1.-10. (No change.)

11. Violation of any of the following prohibitions on vendor activities representing a conflict of interest, or failure to report a solicitation as set forth in (a)11ii below:

i. (No change.)

ii. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any Authority officer or employee or special Authority officer or employee from any person shall be reported in writing by the person to the Attorney General and the Ethics Liaison Officer.

iii. No person may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to, any Authority officer or employee or special Authority officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Authority, or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this subsection shall be reported in writing to the Authority Ethics Liaison Officer and the State Ethics Commission, which may grant a waiver of this restriction upon application of the Authority officer or employee or special Authority officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

iv.-v. (No change.)

(b) The provisions in (a)11 above shall not be construed to prohibit an Authority officer or employee or special Authority officer or employee from receiving gifts from or contracting with persons under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the State Ethics Commission may promulgate.

**SUBCHAPTER 3. AFFIRMATIVE ACTION IN AUTHORITY-FINANCED CONSTRUCTION PROJECTS**

19:30-3.1 Definitions

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

"Affirmative action" or "AA," whether used separately or in combination with other words or phrases (including, but not limited to, "program," "equal employment opportunity" and "EEO/AA"), means good faith efforts taken to ensure equal opportunity employment for women and minority workers consistent with the New Jersey Department of Treasury Equal Employment Opportunity and Affirmative Action rules, set forth at *N.J.A.C. 17:27*, but does not include employment quotas, except where otherwise permitted and appropriate under applicable law.

"Authority" means the Internal Process Management unit in the New Jersey Economic Development Authority.

"Authority financial assistance" means any loan, loan guarantee, grant, incentive, tax exemption or other financial assistance that is approved, funded, authorized, administered or provided by the Authority to any entity and is provided before, during or after completion of a project, including but not limited to all Authority financial assistance received by the entity pursuant to the Business Employment Incentive Program Act, P.L. 1996, c. 26 (*N.J.S.A. 34:1B-124 et seq.*),

that enables the entity to engage in a construction contract, but this subchapter shall not be construed as requiring affirmative action for construction commencing more than two years after an entity has executed with the Authority a commitment letter regarding Authority financial assistance and the first payment or other provision of the assistance is received.

"AA Compliance Officer" means the officer or employee designated by the Authority to monitor affirmative action in Authority financed projects.

"Construction contract" means any contract, subcontract, or agreement, whether written or oral, for construction, reconstruction, demolition, alteration, repair work, maintenance work, or construction related to installation of equipment, undertaken in connection with Authority financial assistance or any of its projects, those projects which it undertakes pursuant to P.L. 2002, c. 43 or undertaken to fulfill any condition of receiving Authority financial assistance and paid for in whole or in part with funds received through Authority financial assistance, including the performance of any contract to construct, renovate or otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance, unless specifically exempted by *N.J.A.C. 19:30-3.4*.

"Construction project" or "project" means a project that has received final approval from the Authority.

...

"Entity" means "project owner/applicant" as defined below in this section and/or "landlord of the entity receiving Authority financial assistance" pursuant to *N.J.A.C. 19:30-3.4(b)*.

"Minority worker" means a worker who is Black, Hispanic, Asian, or American Indian as defined by the New Jersey Department of Treasury in *N.J.A.C. 17:27-2.1* as follows:

1. Black, not of Hispanic Origin means persons having origins in any of the black racial groups of Africa.
- 2.-4. (No change.)

"Monitoring" means Authority review of reports and forms required under this chapter as well as periodic meetings and site visits conducted by the Authority.

"Prime contractor" means the general contractor or construction manager that is designated by the project owner/applicant to be the contractor that is primarily responsible for submitting the required report forms to the Authority pursuant to *N.J.A.C. 19:30-3.7*.

"Project owner/applicant" means the entity which or individual who has applied for, or is the recipient of, or will be the recipient of Authority financial assistance.

...

#### 19:30-3.2 Affirmative Action program for recipients of Authority financial assistance

(a) The Authority will maintain and administer an Affirmative Action Program for the hiring of minority and women workers employed in the performance of construction contracts undertaken in connection with any project that receives Authority financial assistance or undertaken to fulfill any condition of receiving Authority financial assistance including the performance of any contract to construct, renovate or otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance.

(b) This section prescribes procedures designed to eliminate unproductive administrative paperwork, red-tape and delays.

(c) A summary of the Authority's compliance requirements concerning affirmative action and all corresponding report forms and guidance documents can be found on the Authority's Internet webpage at: [www.njeda.com/affirmativeaction](http://www.njeda.com/affirmativeaction).

19:30-3.3 Application of affirmative action regulations

(a) Every contractor or subcontractor involved in a construction contract for a project that has received Authority financial assistance or for a project undertaken to fulfill any condition of receiving Authority financial assistance, including the performance of any contract to construct, renovate or otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance, is required to undertake a program that is designed to employ minority and women workers in accordance with the hiring goals established by the Office of Affirmative Action of Contract Compliance and Equal Opportunity in Public Contracts, New Jersey Department of Treasury unless specifically exempted by *N.J.A.C. 19:30-3.4*.

(b) (No change.)

19:30-3.4 Exemptions of Authority affirmative action regulations

(a) The performance of construction contracts undertaken in connection with any project that receives Authority financial assistance or undertaken to fulfill any condition of receiving Authority financial assistance including the performance of any contract to construct, renovate or otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance, are subject to the requirements of this subchapter, unless the work being performed under the contract is:

1. Performed on a facility owned by a landlord of the entity receiving the Authority financial assistance;
2. The landlord is a party to the construction contract(s); and
3. Less than 55 percent of the facility is leased by the entity at the time of the construction contract(s) and under any agreement to subsequently lease the facility.

(b) This subchapter shall not apply to construction commencing more than two years after an entity has executed with the Authority a commitment letter regarding Authority financial assistance and the first payment or other provision of the assistance is received.

19:30-3.5 Construction contracts

(a) The project owner/applicant and prime contractor or landlord not exempted by *N.J.A.C. 19:30-3.4* shall resolve any questions regarding this subchapter with the Authority prior to the execution of any construction contracts or any construction contracts undertaken to fulfill any condition of receiving Authority financial assistance including the performance of any contract to construct, renovate or otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance.

(b) Construction projects that are undertaken to otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance and therefore do not receive any Authority financial assistance or other provision of the assistance until after the construction project is complete (including, but not limited to, Business Employment Incentive Program and Business Retention and Relocation Assistance Grant Program) are exempt from the retainage provisions of (c)2 below.

(c) Every construction contract must require that:

1. The NJEDA Addendum to Construction Contract, which is provided by the Authority as part of its application for financial assistance and also available at [www.njeda.com/affirmativeaction](http://www.njeda.com/affirmativeaction), must be part of all construction contracts and must be signed by the project owner/applicant, prime contractor and subcontractor (all tiers);
2. Unless specifically exempted by *N.J.A.C. 19:30-3.4* or *3.5(b)*, 10 percent of every disbursement for each construction contract in connection with the construction project shall be retained by the project owner/applicant, agent, trustee or lender until 50 percent completion of the contract. Upon notification to the AA Compliance Officer that a contract is 50

percent complete and confirmation from the AA Compliance Officer that the project is in substantial compliance with this subchapter, five percent of every disbursement for each construction contract must be retained. Upon approximately 90 percent completion of the construction contract and receipt of an Authority Affirmative Action Completion Certificate that is acceptable to the Authority, the Authority will notify the project owner/applicant that the remaining retainage may be released;

3. The contractor or subcontractor, where applicable, 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. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor or subcontractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. Such equal employment opportunity shall include, but not be limited, to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship;

4. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Authority setting forth provisions of this nondiscrimination clause;

5. The contractor or subcontractor, where applicable, will in all solicitations or advertisements for employees placed by or on behalf of the contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;

6. The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a referral letter, to be provided by the Authority, advising the labor union or workers' representative of the contractor's commitments under this subchapter and shall post copies of the referral letters in conspicuous places available to employees and applicants for employment;

7. The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the applicable county employment goals established in accordance with *N.J.A.C. 17:27-7.2*; provided, however, that the Authority may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed in *N.J.A.C. 19:30-3.6*, as long as the Authority is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Authority, that its percentage of active "card-carrying" members who are minority and women workers is equal to or greater than the applicable employment goals established in accordance with *N.J.A.C. 17:27-7.2*;

8. The contractor that is awarded a construction contract or the project owner/applicant must submit an initial project workforce report. Each initial workforce report shall identify the estimated workforce requirements, by trade or craft, of the construction contractors and subcontractors for the duration of the construction contract;

9. The contractor must maintain \*[and]\* **\*or\*** submit certified payrolls to the Authority pursuant to *N.J.A.C. 19:30-4.4* \*[and the New Jersey prevailing wage regulations set forth at *N.J.A.C. 12:60-5.1(c)*]\*;

10. The contractor must submit a monthly project workforce report to the Authority within 15 business days after the end of the reporting month; and

11. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

(d) In the event a construction contract has been executed between a project owner/applicant or landlord not exempted by *N.J.A.C. 19:30-3.4* and the contractor or subcontractor before the project owner/applicant applied to and/or received final approval, the Authority will require that any executed construction contract(s) be amended to include the NJEDA Addendum to Construction Contract, on a go-forward basis or incorporate such addendum by side letter.

19:30-3.6 Mandatory language for construction contracts receiving Authority financial assistance; good faith

(a) A contractor will be considered in compliance with this subchapter only if the contractor has made good faith efforts to meet the minority and women hiring goals for each trade or craft employed on the project. The goals are expressed as percentages of the total hours worked on the project in each trade. The goals are established by the Department of the Treasury, Division of Public Contracts Equal Employment Opportunity Compliance and can be found at the Division's website at: [www.state.nj.us/treasury/contract\\_compliance/](http://www.state.nj.us/treasury/contract_compliance/). The contractor must take the following steps in this effort:

1. When hiring or scheduling workers in each construction trade, the contractor or subcontractor shall make good faith efforts to employ minority and women workers in each construction trade consistent with the applicable employment goal prescribed by *N.J.A.C. 17:27-7.2*; provided, however, that the Authority may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by this paragraph and (a)2 below, as long as the Authority is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Authority, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the applicable employment goal established in accordance with *N.J.A.C. 17:27-7.3*. A good faith effort by the contractor or subcontractor shall include compliance with the following procedures:

i. If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with \*[the rules promulgated by the Treasurer, pursuant to *N.J.S.A. 10:5-31* et seq.,]\* **\*this subchapter\*** as supplemented and amended from time to time. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor shall attempt to hire or schedule minority and women workers directly, consistent with the applicable employment goal. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with the applicable employment goal, the contractor or subcontractor shall be prepared to hire or schedule minority and women workers directly, consistent with the applicable employment goal, by complying with the hiring or scheduling procedures prescribed under (a)2 below; and the contractor or subcontractor shall take said action immediately if it determines or is so notified by the Authority that the union is not referring minority and women workers consistent with the applicable employment goal.

2. If the hiring or scheduling of a workforce consistent with the employment goal has not or cannot be achieved for each construction trade by adhering to the procedures of (a)1 above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall take the following actions consistent with the applicable county employment goals:

i. Notify the AA Compliance Officer, and minority and women referral organizations listed by the Department of the Treasury, Division of Public Contracts Equal Employment Opportunity Compliance pursuant to *N.J.A.C. 17:27-5.3*, of its workforce needs, and request referral of minority and women workers;

ii.-v. (No change.)

3. The contractor or subcontractor shall adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

i. If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall determine the qualifications of such individuals and if the contractor's or subcontractor's workforce in each construction

trade is not consistent with the applicable employment goal, it shall hire or schedule those individuals who satisfy appropriate qualification standards. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience as recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Authority. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of these requirements, however, are limited by the provisions of (a)4 below.

ii. (No change.)

iii. If, for any reason, a contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the AA Compliance Officer.

iv. The contractor or subcontractor shall keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Authority and submitted promptly to the AA Compliance Officer upon request.

4. Nothing contained in (a)2 above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (a)2 above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey workers ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, in implementing the procedures of (a)2 above, the contractor or subcontractor shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union. After notification of award, but prior to signing a construction contract, the contractor shall submit to the Authority an initial EDA project workforce report provided by the Authority for distribution to and completion by the contractor, in accordance with *N.J.A.C. 19:30-3.7*. The contractor shall also submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Authority. The contractor agrees to notify the Authority and at least two minority referral organizations of the contractor's labor needs, and to request referrals of minority and women workers. The contractor shall leave standing requests for referrals of minority and women workers with the local unions, the State Employment Service, New Jersey Bureau of Apprenticeship and Training, and at least two referral sources designated from time to time by the Authority until such time as the contractor has met its hiring goals.

5. In conforming with the applicable employment goals, the contractor or subcontractor shall review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

(b) When compliance challenges are initiated pursuant to *N.J.A.C. 19:30-3.8*, the Authority shall consider the following factors in its determination of whether a contractor or subcontractor has acted in good faith:

1.-7. (No change.)

19:30-3.7 Monitoring by the Authority

(a) The Authority will be responsible for monitoring compliance with this subchapter. The Authority staff will be responsible to review contractor performance for compliance with this subchapter. The prime contractor, as designated by the project owner/applicant or landlord not exempted by *N.J.A.C. 19:30-3.4*, will be required to submit to the Authority the documents in (a)1 through 4 below. The required forms are available for download at: [www.njeda.com/affirmativeaction](http://www.njeda.com/affirmativeaction).

1. An NJEDA Addendum to Construction Contract that has been signed by each contractor and subcontractor and, where applicable, the project owner/applicant;
2. An NJEDA initial project workforce report;
3. An NJEDA monthly project workforce report; and
4. At approximately 90 percent completion of a construction contract, an NJEDA Affirmative Action completion certificate.

(b) The Affirmative Action Compliance Officer will make field inspections of project sites, and may perform audits of records relating to construction activities on the construction project.

(c) Both the project owner/applicant and the prime contractor shall designate an employee from their respective organizations who will coordinate with the Authority and act as liaison with the Authority's Affirmative Action Compliance Officer.

(d) The Authority may prioritize its monitoring of construction projects and contracts based on available staff, cost, nature, timing and extent of the work to be performed under the contract, the number of workers needed to perform the contract, and any other relevant factors.

(e) The AA Compliance Officer may assist contractors in the use of outreach, referral and training programs for minority and women workers.

#### 19:30-3.8 Failure to comply

(a) In the event the Authority determines that a contractor is not in compliance with this subchapter, the Authority will notify the contractor, the project owner/applicant, the construction lender, and the agent or trustee, in writing, of the steps the contractors should take to be considered in compliance. The Authority's actions may include:

1. The Authority on its own initiative or in response to monitoring conducted by an AA Compliance Officer, or in response to a written complaint or allegation from an interested party, shall investigate any complaint or allegation of violation of this subchapter. If the Authority determines there is a substantial probability that a violation is occurring, it may issue a written alert notice to a contractor or subcontractor and/or project owner/applicant if applicable. The alert notice shall explain in sufficient detail the facts of the alleged violation.
2. If the alleged violation explained in the alert notice has not been corrected to the satisfaction of the Authority within seven business days after it is received by the contractor or subcontractor, the Authority shall issue a violation notice to said contractor or subcontractor and/or project owner/applicant if applicable. Said violation notice shall explain in sufficient detail the facts of the continuing violation.
3. The Authority, acting on its own initiative or in response to a written complaint or allegation from an interested party, shall investigate any written complaint or allegation of a violation. If the Authority staff investigating the complaint or allegation determines there is a substantial probability that a violation is occurring, the Authority shall issue a violation notice to said contractor or subcontractor and/or project owner/applicant if applicable. Said violation notice shall explain in sufficient detail the facts of the continuing violation.
4. The notice of violation shall notify the alleged violator that it shall submit within seven business days, a written statement explaining why it is not in violation of this subchapter or an explanation of how it will correct any such viola-

tion. If the Authority determines that the contractor or subcontractor has not adequately explained why it is not in violation or if the Authority determines that the alleged violation is continuing to occur, then it shall conduct an investigatory conference to determine whether there is a violation and/or if corrective measures must be taken. A conference may also be conducted to discuss and resolve issues before imposing financial penalties in accordance with *N.J.S.A. 10:5-35* and *36*. The investigatory conference shall be conducted within 30 business days of the alleged violator's submission of its written statement in response to the violation notice. The Authority may conduct interviews and request from appropriate parties the submission of additional information as is considered necessary to determine whether the alleged violation has occurred.

5. A technical assistance meeting with the Authority may be requested by a contractor and/or subcontractor at any time, whether or not a violation has been alleged.

(b) If the contractor fails to comply or otherwise respond after receipt of the notice in (a) above, and/or when the Authority determines that a contractor, subcontractor or project owner/applicant or landlord not exempted by *N.J.A.C. 19:30-3.4* is in violation of this subchapter, the Authority may take action against the contractor, subcontractor or project owner/applicant by ordering or taking part in any or all of the remedial actions in (b)1 through 5 below:

Recodify existing 2. and 3. as 1. and 2. (No change in text.)

3. Subject the contractor, subcontractor or project owner/applicant to a fine of up to \$ 1,000 for each violation for each day during which the violation continues, said fine to be collected in a summary manner pursuant to the Penalties Enforcement Law of 1999 (*N.J.S.A. 2A:58-10* et seq.);

4. Direct the project owner/applicant/agent/trustee or lender to withhold part or all of the contract or subcontract payments then due and owing; and/or

5. Refer the determination of violation proceeding to the Authority unit that administers the Authority financial assistance to determine if the commitment to, or offer of, Authority financial assistance should be withdrawn from the project owner/applicant or terminated and/or repaid.

19:30-3.9 Chief Executive Officer to enforce regulations

The Chief Executive Officer may require applicants for Authority financial assistance to make such additional representations to the Authority and to enter into such covenants and agreements with the Authority as are necessary to carry out the purposes of this subchapter, including requiring such applicant to require by contract any landlord not exempted by *N.J.A.C. 19:30-3.4* to comply with this subchapter. The Chief Executive Officer shall take such steps as are necessary to ensure compliance with this subchapter.

#### SUBCHAPTER 4. PAYMENT OF PREVAILING WAGES IN AUTHORITY PROJECTS

##### 19:30-4.1 Definitions

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

"Authority financial assistance" means any loan, loan guarantee, grant, incentive, tax exemption or other financial assistance that is approved, funded, authorized, administered or provided by the Authority to any entity and is provided before, during or after completion of a project, including but not limited to, all Authority financial assistance received by the entity pursuant to the Business Employment Incentive Program Act, P.L. 1999, c. 26 (*N.J.S.A. 34:1B-124* et seq.), that enables the entity to engage in a construction contract.

"Construction contract" means any contract, subcontract or agreement, whether written or oral, for construction, reconstruction, demolition, alteration, repair work, maintenance work, or construction related to installation of equipment, undertaken in connection with Authority financial assistance or any of its projects, those projects which it undertakes pursuant to P.L. 2002, c. 43 or undertaken to fulfill any condition of receiving Authority financial assistance and paid

for in whole or in part with funds received through Authority financial assistance, including the performance of any contract to construct, renovate or otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance unless specifically exempted by *N.J.A.C. 19:30-4.2*.

"Construction project" or "project" means a project that has received final approval from the Authority.

"Contractor" means any party who enters into a construction contract with the project owner/applicant, or any party to whom funds will be disbursed for payment of construction work, including any subcontractor of the contractor.

"Prevailing wage rate" means the prevailing wage rate established by the Commissioner of New Jersey Department of Labor and Workforce Development from time to time in accordance with the provisions of *N.J.S.A. 34:11-56.25* et seq. for the locality in which the project is located.

#### 19:30-4.2 Payments of prevailing wages in projects receiving assistance

(a) Not less than the prevailing wage rate shall be paid to workers employed in the performance of any construction contract, including contracts for millwork fabrication, undertaken in connection with Authority financial assistance or any of its projects, those projects which it undertakes pursuant to P.L. 2002, c. 43 (*N.J.S.A. 52:27BBB-1* et seq.), or undertaken to fulfill any condition of receiving Authority financial assistance, including the performance of any contract to construct, renovate, or otherwise prepare a facility for operations which are necessary for the receipt of Authority financial assistance, unless the work performed under the contract is:

1. Performed on a facility owned by a landlord of the entity receiving the assistance;
2. The landlord is a party to a construction contract(s); and
3. Less than 55 percent of the facility is leased by the entity at the time of the contract and under any agreement to subsequently lease the facility.

(b) In accordance with P.L. 2007, c. 245 (*N.J.S.A. 34:1B-5.1*), nothing in this subchapter shall be construed as requiring the payment of prevailing wage for construction commencing more than two years after an entity has executed with the Authority a commitment letter regarding Authority financial assistance and the first payment or other provision of the assistance is received.

#### 19:30-4.3 Assurances required

(a) Recipients of Authority financial assistance for construction contracts shall deliver an NJEDA affirmative action completion certificate to the Authority (or designated agent for the Authority), upon completion of the contract, signed by an authorized representative of the recipient, representing and confirming that:

1. It has complied and has caused its landlord, if applicable, contractors and subcontractors to comply with the requirements of *N.J.A.C. 19:30-4.2*; or
2. It has not entered into any construction contracts subject to the provisions of *N.J.A.C. 19:30-4.2(a)* and its landlord has not entered in any contracts pursuant to *N.J.A.C. 19:30-4.2(a)*.

#### 19:30-4.4 Contract provisions required

(a) All construction contracts in the amount of \$ 2,000 or more shall require that:

**\*1. Prime contractors maintain and submit certified payroll records to the Authority; or\***

\*[1.]\* **\*2.\*** Contractors and subcontractors \*[permit]\*\*:\*

**\*i. Permit\*** the Authority, or its designated agent, complete access to payroll records and other records for purposes of determining compliance with the provisions of this subchapter; **\*and\***

**\*[2.]\* \*ii.\*** **\*[Contractors and subcontractors keep]\* \*Keep\*** accurate records showing the name, craft or trade, and actual hourly rate of wages paid to each worker employed in connection with the performance of the contract and to preserve such records for two years from the **\*[completion date of the project; and]\* \*date of payment.\***

**\*[3. Prime contractors maintain and submit certified payroll records to the Authority pursuant the New Jersey prevailing wage regulations, set forth at *N.J.A.C. 12:60-5.1.*]\***

#### 19:30-4.5 Violation

A violation of the provisions of this subchapter shall be deemed a violation of *N.J.S.A. 34:11-56.25* et seq. and *N.J.A.C. 12:60-5.1*, and the Internal Process Management unit in the EDA shall refer the determination of violation proceeding to the Authority unit that administers the Authority financial assistance to determine if the commitment to, or offer of, Authority financial assistance should be withdrawn, terminated and/or repaid.

### SUBCHAPTER 6. FEES

#### 19:30-6.1 Application fee

(a) Except as set forth in (c) and (d) below, a non-refundable fee of \$ 1,000 shall accompany every application for Authority assistance, except for:

1. An application under the Edison Innovation Growth Fund, for which the fee is .25 percent of the loan amount, not to exceed \$ 2,500;
2. An application submitted by a higher education institution pursuant to P.L. 2009, c. 90 for which the fee is .125 percent of the total project cost or \$ 15,000, whichever is greater;
3. An application for a State or local incentive grant under the Economic Redevelopment and Growth (ERG) Grant Program, for which the fee is \$ 5,000; and for a State or local incentive grant, the full amount of direct costs of any analysis by a third party retained by the Authority, if the Authority deems such retention to be necessary, shall be paid; and
4. An application for assistance under the Small Business Fund and *N.J.S.A. 34:1B-47* et seq., for which the fee is \$ 300.00.

(b) The non-refundable application fee of \$ 1,000 for a guarantee of a bond issued by the Authority is in addition to the bond application fee.

Recodify existing (b)-(c) as (c) and (d) (No change in text.)

#### 19:30-6.2 Commitment fees

(a)-(b) (No change.)

(c) A non-refundable fee of .5 percent of the maximum aggregate amount of the incentive grant award not to exceed \$ 300,000 is charged upon approval by the Authority of a State incentive grant and upon approval of the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs of a local incentive grant under the Economic Redevelopment and Growth (ERG) Grant Program.

(d) A non-refundable fee of .5 percent of the loan or guarantee amount is charged with the acceptance by an applicant of a direct loan or guarantee commitment under the Small Business Fund.

(e) A non-refundable fee of one-half of one percent of the total amount of a direct loan or \$ 100.00, whichever is greater, is charged upon the signing of a commitment letter for a direct loan through funding provided under *N.J.S.A. 34:1B-47 et seq.*

(f) A non-refundable commitment fee of .875 percent of the loan amount is charged with the acceptance by an applicant of any direct loan commitment other than as described in (a), (b), (c), (d) or (e) above.

(g) (No change in text.)

#### 19:30-6.3 Closing fees

(a)-(c) (No change.)

(d) For direct loans from the Authority, other than loans under the Statewide Loan Pool, Preferred Lender Program and the New Jersey Business Growth Fund, the fee, to be paid at closing, is .875 percent of the loan amount. For direct loans under the Edison Innovation Growth Fund, the fee to be paid at closing is .75 percent of the loan amount; and, for the Edison Innovation Commercialization Fund, the fee to be paid at closing is .5 percent of the loan amount. For direct loans under the Small Business Fund, the fee to be paid at closing is .5 percent of the loan amount. For direct loans under *N.J.S.A. 34:1B-47 et seq.*, the fee to be paid at closing is one-half of one percent of the total amount of the direct loan.

(e)-(f) (No change.)

(g) For a State incentive grant under the Economic Redevelopment and Growth (ERG) Grant Program, the fee to be charged at closing is .5 percent of the maximum aggregate amount of the incentive grant award not to exceed \$ 300,000; the commitment and closing fees shall not exceed one percent of the maximum amount not to exceed \$ 600,000.

(h) For a local incentive grant under the Economic Redevelopment and Growth (ERG) Grant Program, the fee to be charged at closing is .5 percent of the maximum aggregate amount of the incentive grant award not to exceed \$ 300,000; the commitment and closing fees shall not exceed one percent of the maximum amount not to exceed \$ 600,000.

(i) For a combined State and local incentive grant under the Economic Redevelopment and Growth (ERG) Grant Program, the fee to be charged at closing is .5 percent of the maximum aggregate amount of the combined incentive grant awards not to exceed \$ 300,000; the commitment and closing fees shall not exceed one percent of the combined maximum amount not to exceed \$ 600,000.

#### 19:30-6.4 Post-closing fees

(a) The fees in this section are due and payable upon closing of the bond amendment, approval of change of ownership, or signing of modification consent, waiver, or similar documents.

1.-5. (No change.)

6. For review and execution of a document or the preparation of documents, or granting a consent or waiver related to an Authority-assisted project, a fee of \$ 250.00 shall be charged. For direct loans, a standard documentation fee of \$ 500.00 shall be charged except for direct loans under the Small Business Fund or *N.J.S.A. 34:1B-47 et seq.*, for which the fee shall be \$ 300.00; and for any negotiations pertaining to Authority documentation, legal costs of the Authority shall be borne by the borrower.

7.-8. (No change.)

9. For approval to pledge and assign a State incentive grant amount pursuant to N.J.A.C. 19:31-4.11(a) under the Economic Redevelopment and Growth (ERG) Grant Program, a fee of \$ 2,500 shall be charged.

(b) (No change.)

19:30-6.7 Fee waiver

The Chief Executive Officer may, with the approval of the members, waive certain fees upon demonstration by the applicant that the imposition of the fee would impose an undue financial hardship. The members may delegate to a Director, with the concurrence of the Chief Executive Officer, Chief Operating Officer or Senior Vice President, authority to waive a loan commitment extension fee; and may delegate to a Director, authority to waive late fees when the cause for the late fee is beyond the control of the borrower. The Chief Executive Officer, with the approval of the members, may waive, postpone or decrease bond application and closing fees for municipal governmental agency(s) or State agency projects. In the case of State agency projects, such waiver, postponement or decrease shall be in accordance with the directives of the State Treasurer regarding the specific State agency projects.

SUBCHAPTER 7. DISABILITY DISCRIMINATION COMPLAINT PROCEDURE

19:30-7.1 Definitions

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

...

"Designated decision maker" means the Chief Executive Officer of the Authority or his or her designee.

...

CHAPTER 31

AUTHORITY ASSISTANCE PROGRAMS

SUBCHAPTER 2. LOAN GUARANTEE PROGRAMS

19:31-2.1 Program description

(a)-(b) (No change.)

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

1.-3. (No change.)

4. (No change in text.)

(d) (No change.)

19:31-2.3 Application procedures

(a)-(d) (No change.)

(e) (No change in text.)

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.-6. (No change.)

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)-(c) (No change.)

### SUBCHAPTER 3. DIRECT LOAN PROGRAM

#### 19:31-3.1 Program description

(a)-(l) (No change.)

(m) For Small Businesses, Minorities' and Women's Enterprises loans:

1. Of the financial assistance allocated by the Authority from the funds made available pursuant to the provisions of *N.J.S.A. 5:12-181*, 50 percent shall be made available to women, and 50 percent shall be made available to minorities and all such funds shall be invested in accordance with the geographic restrictions established by *N.J.S.A. 5:12-181*;

2. Of the financial assistance allocated by the Authority from sources other than those funds made available pursuant to the provisions of *N.J.S.A. 5:12-181*, 50 percent shall be made available to small businesses, 25 percent shall be made available to minorities, and 25 percent shall be made available to women;

3. For the purposes of financial assistance provided by the Authority pursuant to this subsection:

i. A small business is a business which has its principal place of business in the State, is independently owned and operated, has 100 or fewer full-time employees, and at least 51 percent of the beneficial ownership of the business is held by persons other than minorities or women and the majority of the management of which is other than minorities or women;

ii. A minority business is a business in which at least 51 percent of the beneficial ownership of the business is held by minorities and the majority of the management are minorities; and

iii. A women's business is a business in which at least 51 percent of the beneficial ownership of the business is held by women, and the majority of the management are women; and

4. Each application for a loan shall be accompanied by any proof of certification by a public entity which certifies that the business is beneficially owned by, and that the majority of the management are, minorities or women.

### 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 to stimulate the economy.

### SUBCHAPTER 7. LOCAL DEVELOPMENT FINANCING FUND

#### 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. If financial assistance is provided from the Fund to purchase a participation in a bank loan, a non-refundable fee of \$ 750.00 is charged with the acceptance of a commitment under the Fund. A closing fee is not charged for a bank participation from the Fund.

(b)-(f) (No change.)

## SUBCHAPTER 8. HAZARDOUS DISCHARGE SITE REMEDIATION FUND

### 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:

...

"Renewable energy generation" means:

1. Electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, methane gas from landfills, a resource recovery facility, a hydropower facility or a biomass facility, provided that the biomass is cultivated and harvested in a sustainable manner, and provided further that the Commissioner of the Department of Environmental Protection has determined that the resource recovery facility, hydropower facility or biomass facility, as appropriate, meets the highest environmental standards and minimizes any impacts to the environment and local communities; and
2. Energy produced from solar thermal or geothermal technologies.

...

### 19:31-8.3 Eligibility

(a) (No change.)

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

- 1.-3. (No change.)
4. Matching grants of up to 75 percent of the costs of remedial action on contaminated real property for renewable energy generation;

Recodify existing 4. and 5. as 5. and 6. (No change in text.)

(c) (No change.)

(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;
2. An owner or operator of a child care center licensed pursuant to P.L. 1983, c. 492 (*N.J.S.A. 30:5B-1 et seq.*), or a prospective owner or operator of a child care center who has applied for a license pursuant to P.L. 1983, c. 492 (*N.J.S.A. 30:5B-1 et seq.*), a grant of \$ 1,500 for the costs of a preliminary assessment performed in order to obtain a no further

action letter as required pursuant to the provisions of subsection b. of section 2 of P.L. 2007, c. 1 (*N.J.S.A. 52:27D-130.5*) or performed as part of the child care center licensing requirements established by the Department of Children and Families; and

3. (No change in text.)

(e) Preconditions to eligibility are as follows:

1. For public entities:

i. Except for remediation grants made pursuant to (b)6 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 6 above, no grant or financial assistance shall be awarded for a remedial action until the public entity actually owns the real property.

iii. (No change.)

2.-3. (No change.)

(f) (No change.)

19:31-8.6 Amount of financial assistance and grants

(a)-(c) (No change.)

(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, for renewable energy generation or for affordable housing, shall not exceed \$ 5,000,000 in any calendar year.

(e)-(g) (No change.)

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 to the Department 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) (No change.)

(c) In the case of a grant or financial assistance, payment will be conditioned upon the subrogation to the Department of all rights of the recipient to recover remediation costs from the insurance carrier, discharger or person in any way responsible for a hazardous substance pursuant to *N.J.S.A. 58:10-23.118* who does not have a defense to that liability under *N.J.S.A. 58:10-23.11(g)*. All moneys collected in a cost recovery subrogation action shall be deposited into the Fund. No award of a grant or financial assistance shall be made if the applicant relinquishes, impairs or waives, or has

relinquished, impaired or waived, any right to recover the costs of remediation against any insurance carrier, discharger or person in any way responsible for a hazardous substance pursuant to *N.J.S.A. 58:10-23.11(g)*.

(d)-(e) (No change.)

19:31-8.14 Fees

(a) Application fees shall be charged as follows:

1. A \$ 500.00 non-refundable fee shall be due upon submittal of an application for financial assistance or grant;
2. Additional non-refundable application fees for financial assistance are as follows: \$ 500.00 or one-half of one percent of the financial assistance, whichever is greater, shall be charged upon the acceptance of financial assistance under the Fund; and \$ 500.00 or one-half of one percent of the financial assistance, whichever is greater, shall be charged at closing.

(b) No Authority fees shall be paid from the financial assistance or grant award.

#### SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM

19:31-10.11 Prevailing wage and affirmative action

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

#### 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.*), as amended, which pertain to the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund. The 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.

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:

...

"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 \$ 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 ("Category 1");

2. The owner or operator of a petroleum underground storage tank storing heating oil for onsite consumption in a residential building located in New Jersey ("Category 2");

3. (No change.)

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

5. A nonprofit organization, corporation, or association located in New Jersey 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 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 ("Category 5"); or

6. A duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad located in New Jersey ("Category 6").

...

"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.

...

"Independent institution of higher education" means those institutions of higher education incorporated and located in the 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.

"Non-residential building" means any building that is not a residential building.

"Operator" means any person in control of, or having responsibility for, the daily operation of a facility at the time that the application for financial assistance is submitted. The term "operator" also includes a person who, prior to the time that the application for financial assistance is submitted, sold a facility for which the person had daily operational control or responsibility for its daily operation, and who, in order to meet the person's obligation under State or Federal law to remediate contamination caused by the discharge of hazardous substances from the facility, contracts with the buyer to conduct the remediation of the contamination subsequent to the closing of the sale of the facility.

...

"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. An applicant can have only one primary residence for purposes of this subchapter.

...

"Residential building" means a dwelling and not ancillary structures.

"State" means State of New Jersey.

"Unregulated tank" means a petroleum underground storage tank that is not required to be upgraded pursuant to *N.J.S.A. 58:10A-21* et seq. or *42 U.S.C. §§ 6991* et seq.

...

#### 19:31-11.3 Eligibility

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

1. Eligible owners or operators to finance eligible project costs of an upgrade or closure of a regulated tank pursuant to *42 U.S.C. §§ 6991* et seq. or *N.J.S.A. 58:10A-21* et seq., provided that they owned or operated the subject tank as of December 1, 2002 and continually thereafter or inherited the property from a person who owned the property as of that date;
2. Eligible owners or operators to finance eligible project costs of remediation due to the discharge of petroleum from one or more tanks, provided that, in the case of regulated tanks, they owned the tank(s) at the time of closure;
3. Eligible 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 June 30, 2010, whichever is later;
4. Eligible owners or operators of regulated tanks to finance eligible project costs of closure and remediation if the application is filed with the Department by June 30, 2010, and the application fee is received by the Authority and the application is deemed complete by December 31, 2010;
5. Eligible owners or operators of regulated tanks who have met the upgrade 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.) may qualify for a loan in order to finance an improvement or replacement of a regulated tank to meet State and Federal standards;
6. Category 5 and 6 eligible owners or operators of petroleum underground storage tanks with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a nonresidential building where no remediation is required may qualify for a grant to finance eligible project costs of closure and replacement, provided that the tank was not previously replaced with a grant from the Fund;
7. Eligible owners or operators in Category 5 and 6 may qualify for a grant to finance eligible project costs of closure or remediation of a petroleum underground storage tank; and
8. Eligible owners or operators of petroleum underground storage tanks used to store heating oil for onsite consumption in a residential building may qualify for a grant to finance eligible project costs of closure or closure and replacement. To the maximum extent possible, the eligible owner or operator shall replace the tank with an aboveground tank.

#### 19:31-11.4 Amount of financial assistance

(a) Financial assistance may be for 100 percent of the eligible project costs, subject to any dollar limitations as may otherwise be set forth in this subchapter. Loans for upgrade, remediation or closure, or any combination, for any one facility, shall not exceed \$ 2,000,000, except as provided in (a)1 and 2 below:

1. 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), 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.), or the Highlands Region designated pursuant to section 7 of P.L. 2004, c. 120 (*N.J.S.A. 13:20-7*), the eligible owner or operator may receive a loan in an amount not to exceed \$ 3,000,000; and
2. (No change in text.)

(b) Grants for upgrade, remediation, closure, or replacement or any combination, for any one facility, shall not exceed \$ 500,000 except as provided in (b)1 and 2 below.

1. 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), 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.), or the Highlands Region designated pursuant to section 7 of P.L. 2004, c. 120 (*N.J.S.A. 13:20-7*), the eligible owner or operator may receive a grant in an amount not to exceed \$ 1,000,000 for each facility so located.

2. In the case of a closure, or closure and replacement, of a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building where no remediation is required, an eligible owner or operator may receive a grant for the eligible project costs consistent with the cost guidelines established by the Department pursuant to section 4 of P.L. 2009, c. 134 (*N.J.S.A. 58:10A-37.5b*) and in effect at the time the closure is performed.

3. In the case of an emergency remediation of a discharge from a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building, an eligible owner or operator may receive a grant in an amount equal to the actual costs incurred by the Department or its authorized agents (excluding administrative costs), and borne by the eligible owner or operator.

4. In the case of a closure or replacement of a petroleum underground storage tank with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a nonresidential building that is owned or operated by those in either Category 5 or Category 6, where no remediation is required, the eligible owner or operator may receive a grant for the eligible project costs of the closure or replacement in an amount consistent with the cost guidelines developed by the Department pursuant to section 4 of P.L. 2009, c. 134 (*N.J.S.A. 58:10A-37.5b*) and in effect at the time the closure or replacement is performed, provided that the petroleum underground storage tank was not previously replaced with a grant from the Fund.

5. A Category 4 eligible owner or operator may receive a grant in an amount up to \$ 1.5 million per institution to fund the remediation costs.

#### 19:31-11.5 Eligible project costs

(a) Financial assistance from the Fund may be made for eligible projects, as follows:

1. In the case of an upgrade or closure of a regulated tank, eligible project costs are limited to the cost of the minimal effective system necessary to meet all the regulatory requirements of Federal and State law, except that an eligible owner or operator who has met the upgrade 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.) may be awarded a loan which shall not be limited to the cost of a minimal effective system, in order to finance the costs of the improvement or replacement of tanks to meet State and Federal standards as provided in subsection g. of section 5 of P.L. 1997, c. 235 (*N.J.S.A. 58:10A-37.5*). 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 in the form of a grant shall be that amount that would represent the cost of a minimal effective system.

2. In the case of a remediation, replacement, or closure of an unregulated tank, eligible project costs shall include the cost to replace a tank with an aboveground or underground storage tank.

3. 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.

4. No financial assistance may be awarded from the Fund for remediation if the discharge began after completion of an upgrade intended to meet all applicable upgrade regulations of the Department.

5. Except as set forth below in this subsection, no award of financial assistance shall be made from the Fund for the otherwise eligible project costs of a remediation, closure or an upgrade, or parts thereof, completed prior to an award of financial assistance from the Fund:

- i. 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 August 30, 1997;
- ii. Eligible project costs may include reimbursement of expenditures incurred by eligible owners or operators, 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;
- iii. Eligible project costs may include reimbursement of expenditures incurred by 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;
- iv. Eligible project costs may include reimbursement of expenditures incurred by owners and operators for closure, or closure and replacement, of a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building where no remediation is required prior to the completion of such work if the applicant submits all of the information required pursuant to *N.J.A.C. 19:31-11.8* to the Authority within 45 days of issuance by the Authority of a preliminary approval letter;
- v. Eligible project costs may include reimbursement of expenditures incurred by an applicant for remediation of a tank at the applicant's primary residence prior to filing an application;
- vi. Eligible project costs may include reimbursement of expenditures incurred by an eligible owner or operator in the case of an emergency remediation of a discharge from a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building paid to the Department or its agent (except for administrative costs); and
- vii. Eligible project costs may include reimbursement of expenditures made by Category 5 and 6 applicants for remediation of a discharge caused by a tank with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a non-residential building on or after October 1, 2009, but prior to the filing of an application.

6. 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 its 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*).

7. An applicant shall not receive financial assistance from this Fund if assistance was previously made under the Hazardous Discharge Site Remediation Fund at that site.

8. No person shall be eligible for a grant from the Fund to replace a petroleum underground storage tank that stores heating oil for onsite consumption in a residential building if the tank that stores heating oil for that residential building was previously replaced using a grant from the Fund.

#### 19:31-11.6 Terms of financial assistance

(a) An entity applying for financial assistance from the Fund may only be awarded financial assistance in the form of an interest free loan, as follows:

1. 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. The Authority shall determine the interest rate based on the applicant's ability to repay the loan.

2. 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.

3. A loan shall be awarded only upon a finding that the applicant, other than a public entity, is able to repay the loan.

4. Except for eligible owners and operators in Categories 2, 4 and 6, applicants cannot be awarded a loan unless they show the inability to qualify for a conventional loan for all or part of the eligible project costs.

(b) An applicant, other than a public entity, may apply for and receive a conditional hardship grant based on Authority findings under all of the following three criteria:

1. Eligibility:

i. In order to be eligible for a conditional hardship grant for closure or upgrade, in the case of a regulated tank, the applicant shall 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 not have a taxable income of more than \$ 250,000 or a net worth, exclusive of the applicant's primary residence and pension, of over \$ 500,000 taxable income derived from the tax return in the year prior to making application.

ii. In order to be eligible for a conditional hardship grant for remediation, in the case of a regulated tank, the applicant shall have owned or operated the subject regulated tank at the time of tank closure; and not have a taxable income of more than \$ 250,000 or a net worth, exclusive of the applicant's primary residence and pension, of over \$ 500,000 taxable income derived from the tax return in the year prior to making application.

iii. The eligibility requirements for net worth and taxable income are not applicable to applicants qualifying as eligible owners or operators under Categories 4, 5 or 6 and seeking grant monies for closure or remediation costs;

2. Financial hardship:

i. 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.

ii. 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; however, any applicant with a taxable income of more than \$ 200,000 who qualifies for a grant shall be required to pay no more than \$ 1,000 of the eligible project costs; and

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

(c) 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 residence, nor shall repayment be required if the sale is pursuant to a condemnation proceeding or the exercise of the power of eminent domain.

(d) Conditional hardship grants shall be subject to the lien provisions set forth in the Act.

(e) 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.

(f) 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.

19:31-11.7 (No change in text.)

19:31-11.8 Application for financial assistance

(a) (No change.)

(b) The applicant will be given priority for financial assistance based on the date of receipt by the Authority of a completed application, subject to the priority system set forth in *N.J.A.C. 19:31-11.5*.

(c)-(d) (No change.)

(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, 2010, or for a regulated tank that is not operational, 18 months from the date of discovery of the tank or June 30, 2010, whichever is later.

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

1. (No change.)

2. A description of the proposed project and a detailed breakdown of the use of the financial assistance 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 Federal income tax returns for the three most recent years;

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

5.-6. (No change.)

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, EDA application, tax clearance certificate and property deed; and

9. Submission of an application and fee for a tax clearance certificate pursuant to P.L. 2007, c. 101.

Recodify existing (i) and (j) as (g) and (h) (No change in text.)

(i) In the case of a closure or a replacement and closure of a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building where no remediation is required, if an applicant submits a complete application package to the Authority prior to the completion of the project and the Authority determines that the applicant qualifies for the grant, the Authority shall issue written confirmation that the applicant will receive a grant upon completion of the project, subject to the applicant's submission of the following to the Authority within 45 days from the issuance date of the written confirmation: invoices; executed General Non-Leaking Tank Certification; executed Contractor Non-Leaking Tank Certification; executed Financial Assistance Agreement; copy of the deed for the subject property; and a valid Business Tax Clearance Certificate. For purposes of this subsection, a complete application pack-

age shall include all of the following: non-refundable application fee; completed Non-Leaking Tank Application; executed Frequently Asked Questions; current Personal Financial Statement; and Federal Income Tax Returns for the last three years.

(j) The written confirmation shall be valid for 45 days from the date of issuance. Any applicant, who has received written confirmation pursuant to this subsection and fails to submit the documentation, certification, or other information required by this subsection before the expiration date of confirmation, shall be required to submit a new application for review.

#### 19:31-11.9 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, as applicable:

1.-5. (No change.)

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

7.-8. (No change.)

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

(c) If a positive determination is made, the requested financial assistance shall be presented to the members of the Authority for approval, or considered by authorized Authority staff through delegated authority, if applicable.

#### 19:31-11.10 Approval process for financial assistance

(a) Only the members of the Authority can approve financial assistance from the Fund, unless the authority to approve certain types of transactions has been expressly delegated by the members to Authority staff.

(b)-(c) (No change.)

(d) If there has been no veto, or if Authority staff has rendered its approval under delegated authority, a formal commitment letter, notice of approval of financial assistance shall be issued to the applicant.

1. (No change.)

(e)-(f) (No change.)

(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, subject to any preconditions to disbursement imposed thereon by the Authority.

#### 19:31-11.11 Disbursement of financial assistance

(a) All requests for disbursements of the financial assistance shall be submitted by the applicant to the Department with a certification from the contractor or consultant that the requested moneys have been or will be spent in accordance with a Department approved scope of work. The Authority will disburse funds only upon written approval by the Department. Notwithstanding the foregoing, the Authority will disburse funds for closure or closure and replacement of a non-leaking tank upon satisfactory review and approval of a completed application and imposition of a statutory lien, if applicable.

(b)-(d) (No change.)

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

19:31-11.12 (No change in text.)

19:31-11.13 Fees

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

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

(b)-(c) (No change.)

19:31-11.14 (No change in text.)